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THE WORKMEN'S COMPENSATION ACTS, 1897 AND 1900.

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BY

ALBERT PARSONS,

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AUTHOR OF
"THE LIABILITY OF RAILWAY COMPANIES FOR NEGLIGENCE TOWARDS PASSENGERS,"

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INTRODUCTION.

SINCE the last edition of this book was published, the Workmen's Compensation Act has continued to present fresh problems for the Court of Appeal to elucidate. Four important cases have been carried to the House of Lords, with the result that a great part of the existing law on the subject has been revolutionised. All the chief sections of the Act have thus become covered with a thick incrustation of judicial decisions, and unless the words of the sections and the decision upon them are read together, no proper conception of the meaning of the statute can be obtained.

Probably no Act of Parliament in modern time has been so richly and so rapidly adorned with decisions designed to explain its singularly drawn provisions, and certainly no Act has ever received such a unanimous chorus of judicial objurgation. The following are some of the more trenchant expressions of a feeling which seems to be very generally entertained by those who have to interpret the Act.

"The difficulty really arises from this, that the draughtsman has apparently not worked out the scheme which he had in his head, and it looks very much as if the Act had really been framed from notes of legislative intention, and had not been expanded into the proper language. Cases which have arisen, and cases which are likely to arise, appear not to have been contemplated, but apparently were supposed to be covered by the general language used in the Act" (*per* LORD DAVEY: *Lysons* v. *Knowles*, [1901] A. C. 95).

"In endeavouring to arrive at a satisfactory interpretation . . . we labour under considerable difficulty. The whole statute is full of incongruities. In it so many things are said which could not have been meant, and so many things which must have been meant are left unsaid, that one often has great hesitation in even framing a conjecture as to what may have been the views and intentions of its framers" (*per* LORD BRAMPTON: *Hoddinott* v. *Newton, Chambers & Co.*, [1901] A. C. 63).

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"The Act of 1897 is drawn in such an extraordinary fashion, and the methods of arriving at its meaning are so complicated, that it is not easy to deal with it on broad grounds of common sense" (*per* COLLINS, L.J.: *Hennessy* v. *McCabe*, (1900) 69 L. J. Q. B. 175).

Other references to "grotesque" legislation, "ridiculous results," "arbitrary lines," words "loosely and inaccurately used," and "words not the best chosen," may be found scattered through the pages of the various law reports.

It must be confessed that some part of the difficulties which have arisen is due to the widely different canons of interpretation adopted by the Court of Appeal and the House of Lords. The Court of Appeal showed a tendency to construe the Act strictly—to interpret its sections with reference to its schedules, with reference to the sections of some other Act of Parliament, or with reference to some "standard," or some accompanying circumstances not expressly referred to. This method of interpretation has, however, been so decisively repudiated by the House of Lords that it is no longer followed.

The most important cases which have been the subject of these conflicting principles of interpretation, are *Lysons* v. *Knowles* and *Stuart* v. *Nixon & Bruce*. The decisions of the Court of Appeal in these cases ruled out of the Act all casual labourers and all workmen who at the time of an accident had been working for less than a fortnight in their employer's service, on the ground that the Act had provided no means of assessing compensation in such cases. A series of subsidiary cases, both in England and Scotland, immediately arose, and, as in the cases of *Powell* v. *The Main Colliery Co.* and *Flowers* v. *Chambers*, many ingenious attempts were made to mitigate the harshness of the decision. In Scotland these cases were heard and decided; in England, after argument, they stood over pending the appeal to the House of Lords. The result of that appeal swept them all aside. The House of Lords drew a distinction (which in point of law is entirely new *) between the sections of an Act and its schedules, and further declared that the important words in this particular schedule were "loosely and inaccurately used." It was thus made clear

* See Ilbert's Legislative Methods and Forms, pp. 266-268; and *A. G.* v. *Lamplough*, (1878) 3 Ex. D. 229; 47 L. J. Exch. 562.

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that men who had worked for less than a fortnight were entitled to compensation, though how that compensation was to be calculated remained as obscure as ever. This ancillary problem was left to be worked out by the Court of Appeal, and a series of decisions of that Court has now constructed a tolerably complete code, which, though not free from anomalies, is at any rate definite and intelligible. These decisions were delivered in November, 1901, and it is a significant fact that though the Act came into operation in July, 1898, it was not till more than three years had elapsed that it was ascertained how a man's compensation was to be calculated, where he had worked for his employer for a less period than two weeks.

A somewhat similar process was gone through in *Hoddinott* v. *Newton, Chambers & Co.*, with regard to the provision which applies the Act to buildings over thirty feet high "being constructed or repaired by means of a scaffolding." The Court of Appeal held that the words were to be strictly construed. The House of Lords, ignoring all the subtle distinction and qualification which the Court of Appeal put forward, construed them in a spirit of broad generosity, with the result that almost anything may now be a "scaffolding," and almost any piece of work on a building is regarded as being either "construction" or "repair." The question is discussed in more detail on pages 38–41 of this work.

A decision of at least equal importance to the three last mentioned was that of the House of Lords in *Raine* v. *Jobson* (June 24, 1901), which overruled *Flowers* v. *Chambers* and the whole series of supplementary decisions to which it had given birth. The history of the doctrine of *Flowers* v. *Chambers* was a remarkable one. It proceeded upon the assumption that there was in the Act an implied intention to exclude all seamen from its provisions. This nowhere appears in the words of the Act itself, but it seems to have been inferred from the fact that "seamen" are excluded from the scope of certain other Acts, and are not expressly included in this. To such length was it carried that it seems to have been considered that as soon as a man working in a dock got on board a ship berthed in the dock, he got outside the dock, and that though he might be in "close proximity" or in "physical

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contiguity" to the dock (the tests propounded in *Fenn* v. *Miller*), he was, nevertheless, not even about the dock so long as he was on board ship. The decision thus struck out of the Act not only seamen, but also dock labourers, who, until the later case of *Merrill* v. *Wilson*, seem to have been regarded as being employed about a dock when they were at the end of a gangway resting on the quay, and not employed about the dock when they were at the end resting on the ship. The same peculiar conception of what was meant by a "dock" was extended to the interpretation of s. 23 of the Factory Act of 1895 (now repealed and replaced by a different form of words). It was accordingly held in *Hennessy* v. *McCabe*, that loading a ship from a lighter on the surface of the water within a dock was not "loading from a dock" within the meaning of that section, and that consequently machinery used in that process was not machinery to which the Compensation Act applied. A series of attempts—some successful, some unsuccessful—was immediately made to evade the effect of the decision in *Flowers* v. *Chambers*. The first of these was in *Woodham* v. *The Atlantic Transport Co.*, which decided that a dock labourer on board a ship in a dock, though held not to be employed "about" the dock, might yet be regarded as being employed "about" a steam-crane working on the side of the dock, machinery used in loading to or from a dock being a "factory" for the purposes of this Act. This was carried a step further by *Lawson* v. *The Atlantic Transport Co.*, where it was held immaterial that the chain of the steam-crane was at the moment of the accident wholly on shore. Next came the question whether such machinery as a steam-winch on board the ship itself might not be a "factory." In Scotland it was decided by a series of decisions that such machinery was not a factory, on the ground that it was not within the purview of the Factory Acts. In England, however, in *Stuart* v. *Nixon & Bruce*, it seems to have been assumed that such machinery might be a "factory," though the point was not expressly decided. Recourse was also had to the words which made "plant" used in loading or unloading a "factory." Three attempts to take advantage of this provision were defeated on the facts in *Medd* v. *McIver*, *Durrie* v. *Warren*, and *Merrill* v.

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Wilson. Another bold but unavailing attempt to get round *Flowers* v. *Chambers* was made in *Spencer* v. *Livett, Frank, & Sons.* The suggestion there was that an ordinary open dock in which a vessel was being painted (machinery driven by hydraulic power being used to discharge her for that purpose) became *ipso facto* a "shipbuilding yard," and consequently a "factory," but the Court of Appeal not unnaturally declined to entertain the proposition. Finally, in July, 1900, there arose in *Raine* v. *Jobson* the inevitable case of the man employed in repairing a ship within the confines of a dry dock, which satisfied the definition of a "shipbuilding yard" in the Factory Acts, and was consequently a "factory." The Court of Appeal had by this time become so imbued with the principle of *Flowers* v. *Chambers*, that it was there laid down by SMITH, L.J., that "for some reason which was not apparent, and which it would be useless to speculate on, the Legislature had excluded employment on a ship from the operation of the Act" (*The Times*, July 31, 1900). In asserting such a proposition the Court seem absolutely to have lost sight of s. 7, sub-s. 3, which shows that in some circumstances at any rate the Act contemplates that a man may be employed "upon a vessel" and yet be within the Act. The case was, however, carried to the House of Lords, with the result that the decision was reversed, and *Flowers* v. *Chambers*, and all the other cases above named, were either overruled, or for all practical purposes rendered obsolete. The almost mystic quality attributed to a ship by the Court of Appeal is thus a thing of the past, but the incident is surely one of the most extraordinary in modern judicial history.

As will be seen by reference to the notes, the authors have found themselves unable to treat the decision of the Court of Appeal in *Hall* v. *Snowden, Hubbard, & Co.*, as laying down any principle of general application. The question which arose in that case was whether a particular wharf (or a place called a "wharf") was a "factory." It was pointed out that, by the definition of the word, factory included "*any* dock, *wharf*, quay, warehouse, etc., to which any provision of the Factory Acts is applied by the Factory and Workshop Act, 1875," and that by s. 23 of the Act of 1895 certain provisions were applied to

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every dock, wharf, quay, or warehouse. It was consequently contended that *every* wharf was a factory. The reasoning of the Court of Appeal in rejecting this argument is very difficult to follow. They observed, first of all, that by saying "any . . . wharf . . . to which any provision of the Factory Acts is applied," the Legislature indicated that there must be some wharves to which any provision of the Factory Acts was not applied. They then considered *seriatim* the applied provisions enumerated in s. 23 of the Act of 1895 (now s. 104 of the Act of 1901). In regard to the provisions as to the powers of inspectors, dangerous employment, and dangerous machines, the test they propounded was whether those provisions were *applicable* to the place in question; and they decided that they were not. In regard to the provision as to accidents, the test which they put forward was not whether it was *applicable*, but whether it had ever been *actually applied*. That is to say, they asked themselves not whether if an accident occurred on the wharf it would become the duty of the occupier to report it under that provision, but whether there was any evidence that any accident ever had occurred on the wharf, and the duty to report it had consequently arisen. The only accident of which there was any evidence was the accident in the case in question, and as that occurred not in the wharf, but immediately outside it, it was held not to have brought the provision as to accidents into operation. Such is the reasoning of the Court of Appeal. It is not easy to see why the test in one case should be whether a provision is applicable, and in another whether it has been applied, nor indeed why any such refinements at all should be placed upon the plain words of a section which in terms applied certain enumerated provisions to *every* dock, wharf, quay, and warehouse. The Scotch Courts have declined to follow the decision. It was challenged by the Appellant in the House of Lords in *Raine* v. *Jobson*. The Respondent did not attempt to defend it, but freely admitted that *every* dock was a factory, and, as regards the case in question, the admission was characterised by the Lord Chancellor as "a very frank and proper admission." The case is habitually ignored in practice, and no man who has been injured on the confines of a dock, wharf, quay, or warehouse, has within the experience

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of the authors found it necessary to show that on some previous occasion some one else had been injured within these confines, and had thus invested the area in question with the character of a "factory."

The authors would also draw attention to the notes on s. 4, which suggest, it is believed for the first time, some very important limitation to what has generally been understood to be the effect of *Cass* v. *Butler*. It seems impossible to believe that the last word on the meaning of that section has yet been uttered, or that the restrictive interpretation which the Court of Appeal has put upon the definition of "undertakers" in the case of buildings and engineering works will ultimately be sustained. Its effect as it stands at present is that a man may be injured in a difficult and dangerous building operation, and have no right to compensation from any one at all. (See the recent case of *Bush* v. *Hawes*.) In other cases he may sue his ordinary employer, and then find that he has sued the wrong man, as his employer in the case in question is only a sub-contractor.

Most important modifications in the scope of the Compensation Act of 1897 have been incidentally (and almost surreptitiously) effected by the Factory and Workshop Act, 1901. The definition of factory was complicated enough before; it is now more complicated still, and requires to be entirely remodelled before it can be properly appreciated. Fresh categories of machinery and plant are added to those which were "factories" within the meaning of the Act, and words which excited controversy have been repealed and replaced by others. A man, who is injured while loading a ship, in order to ascertain his rights as to compensation, must now consult not only the Compensation Act, but the Factory and Workshop Act, 1895, the Interpretation Act, 1889, the Factory and Workshop Act, 1901, the Merchant Shipping Act, 1894, and the numerous decisions on the definition of "ship" contained in s. 742 of the last-named Act. By the arrangement adopted in this book, the authors venture to hope that they have somewhat reduced the difficulties of this tortuous process. All sections in other Acts of Parliament which are referred to in this Act are set out under each section, and the material sections of the

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new Factory Act of 1901 and of the Interpretation Act, 1889, which explain their application, will be found in a special appendix.

It has been found in practice that this Act has made no provision for the "very probable event" of an employer becoming bankrupt before a claim for compensation has been liquidated by award or by agreement. The authors have accordingly added a note on the point, for suggestions in connection with which they desire to acknowledge their indebtedness to Mr. Muir Mackenzie.

The method of arrangement adopted in the first edition has been followed in the second. Decisions upon this Act are necessarily decisions upon the meaning and scope of particular words. All the cases have accordingly been noted immediately under the words to which they refer, so that the Act and the decisions may be read together. Numerous extracts have been given from the judgments of the Court of Appeal and the House of Lords. All the Scotch cases (for the inclusion of which in the first edition the authors have received many appreciative references) have also been noted. They deal with many points which have not yet arisen, but are certain to arise, in the English Court of Appeal, and even where they cover the same ground as the English decisions, they are often useful as illustrations. Though they are not of binding authority, it has been held that they are entitled to the greatest respect (see *Johnson* v. *Raylton*, (1881) 7 Q. B. D. 445; 50 L. J. Q. B. 756; *Ivay* v. *Hedges*, (1882) 9 Q. B. D. 82; *G. W. R. Co.* v. *Railway Commissioners*, (1881) 50 L. J. Q. B. 486). They are, moreover, constantly cited in the Court of Appeal in cases under this Act. Cross-references have been given wherever necessary to the Rules and Forms. The text of the Acts has been separately printed at the end of the book, and all the material parts of other Acts of Parliament referred to have been set out either in the notes or in the Appendices. It is hoped that in this way the book will be found to be at once concise, complete, and convenient.

In the preparation of this edition the authors have received great assistance from Mr. Raymund Allen, of the South Wales Circuit, and take this opportunity of acknowledging it.

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ADDENDA.

THE following additional Scotch cases should be noticed at the places referred to.

On page 27, line 5.

Work which is merely Ancillary and Incidental, etc.—In *Cooper* v. *M'Govern*, (1901) 39 S. L. R. 102, a carter employed by a railway company to convey goods from a sausage factory to the railway station for purposes of transit to the sale premises of the owners of the factory in other towns was injured by accident when immediately outside the factory. *Held*, that the owners of the factory were liable to pay compensation under s. 4 of the Act, on the ground that the conveyance of the goods to their sale premises was work which was "part of and process in" their business, for the execution of which they had contracted with the railway company.

On page 46.

"**Factory.**"—In *George* v. *Macdonald*, (1901) 39 S. L. R. 136, it was held that a travelling threshing-machine, while on its way to the place where it was to be used, was not a "factory." *Per* LORD M'LAREN: "I think in order to the conception of a factory under the Statute, it must be for the purpose of work carried on in some premises, place, or the curtilage or precincts thereof; and that phraseology is to my mind wholly inapplicable to the case of travelling mechanism." Cf. the judgment of COLLINS, L.J., in *Nash* v. *Hollingshead*, cited p. 47.

On page 103, line 10.

"**On being satisfied as to its genuineness.**"—In exercising his functions under this paragraph, the sheriff (or judge) is not concerned with the question whether the workman's incapacity has ceased. The workman is entitled to have the agreement recorded, and the employer can then apply to have the weekly payment reviewed under par. 12 of the First Schedule. *Cammick* v. *Glasgow Iron and Steel Co.*, (1901) 39 S. L. R. 138; *Dunlop* v. *Rankin & Blackmore*, (1901) 39 S. L. R. 146.

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THE

WORKMEN'S COMPENSATION ACT, 1897.

An Act to amend the Law with respect to Compensation to Workmen for accidental Injuries suffered in the course of their Employment. [6th August, 1897.]

A.D. 1897.

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Sect. 1. Sub-sec. 1.

Liability of certain employers to workmen for injuries.

1.—(1.) If in any employment to which this Act applies personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as herein-after mentioned, be liable to pay compensation in accordance with the First Schedule to this Act.

"**Employment to which this Act applies.**"—See s. 7. To ascertain whether the employment is within the Act, the following tests must be applied:—

(i.) Was the employment one of those enumerated in s. 7, sub-s. 1?

(ii.) Was the workman at the time of the accident engaged "*on, in, or about,*" the railway, factory, mine, quarry, engineering work, or building in question? (See note on these words, at p. 35).

(iii.) Was the employer, or the person contracting with the employer for the execution of the work (s. 4), an "*undertaker,*" as defined in s. 7, sub-s. 2?

"**Personal Injury.**"—Incapacity through nervous shock caused by accident, even without any accompanying physical impact is no doubt within these words. See *Pugh* v. *London, Brighton & South Coast Railway Co.*, [1896] 2 Q. B. 248; 65 L. J. Q. B. 521; and the recent case of *Dulieu* v. *White*, [1901] 2 K. B. 669; 70 L. J. K. B. 837.

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Sect. 1, Sub-sec. 1 (*contd.*).

Meaning of "accident."

"**Accident.**"—Accident implies "something fortuitous and unexpected" (*Pandorf* v. *Hamilton*, (1887) 12 A. C. 58; 57 L. J. Q. B. 24). The test in each case is whether there was anything "fortuitous and unexpected" in the circumstances attending the injury. The "fortuitous and unexpected" element need only be of the very slightest character, *e.g.* a mis-hit, a slip, a sudden movement, a miscalculation. The cases run so fine that it is thought best to set them out seriatim.

(1.) *Hensey* v. *White*, [1900] 1 Q. B. 481; 69 L. J. Q. B. 188. Workman's stomach in diseased condition; while doing his ordinary work he ruptured a blood-vessel. Arbitrator found rupture due to disease and not accident. Finding upheld.

(2.) *Lloyd* v. *Sugg*, [1900] 1 Q. B. 481; 69 L. J. Q. B. 190. Workman's hand in gouty condition; while holding a flatter on an anvil for a fellow-workman to strike, he sustained a jar through the latter making a mis-hit. Arbitrator found injury caused by accident. Finding upheld.

(3.) *Walker* v. *Lilleshall Co.*, [1900] 1 Q. B. 481; 69 L. J. Q. B. 192. Workman working with blistered finger; his work necessitated the handling of red lead; finger coming in contact with the lead became inflamed and poisoned. Arbitrator found no accident. Finding upheld.

(4.) *Thompson* v. *Ashington Coal Co.*, (1901) 17 T. L. R. 345. Collier working in narrow seam, which involved constant kneeling. A small piece of coal found its way up his trousers and worked into his knee, setting up blood-poisoning. Arbitrator found accident. Finding upheld.

(5.) *Timmins* v. *Leeds Forge Co.*, (1900) 16 T. L. R. 521. Workman engaged in shifting timber. During the night planks frozen together from severe frost. Workman, not realizing effect of this, attempted to continue work next morning, and ruptured himself in straining to lift a plank. Arbitrator found accident. Finding upheld.

(6.) *Roper* v. *Greenwood & Sons*, (1900) 83 L. T. 471. Workwoman engaged at work which involved the lifting of heavy boxes. She attempted to lift a box of unusual weight,* *well knowing at the time that she was unable to lift it*, and sustained internal injuries. Arbitrator found no accident. Finding upheld. See judgment of COLLINS, L.J.

(7.) *Boardman* v. *Scott & Whitworth*, (1902) 1 K. B. 43; 71 L. J. K. B. 3. Workman moving a heavy beam, not having it evenly balanced on his shoulder, he "gave himself a hitch" to get it right, and in so doing tore some of the fibres in the muscles of the back. Arbitrator found accident. Finding upheld.

It will be observed that in all the above cases the finding of the arbitrator has been upheld. (See, however, on this point judgment of COLLINS, L.J., in *Roper* v. *Greenwood & Sons*, above cited.) Considerable

* This case was so explained by COLLINS, M.R., in the course of the argument in *Boardman* v. *Scott & Whitworth*, (1902) 1 K. B. 43.

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misapprehension has been caused by a misinterpretation of *Hensey* v. *White* and *Roper* v. *Greenwood & Sons*, but these were cases of very special circumstances, and the tendency to carry them too far has been corrected by *Boardman* v. *Scott & Whitworth*. In connection with this point, note the case of *Hamlyn* v. *Crown Accidental Insurance Co.*, [1893] 1 Q. B. 750; 62 L. J. Q. B. 409, where a man wrenched his knee through stooping to pick up a marble. *Per* LORD ESHER, M.R.: "That that was accidental I cannot doubt. He certainly never meant to wrench his leg, and that wrench would not be the ordinary result of what he was doing. It was a result which would be very unlikely to happen, and was an unexpected result." There is no ground for saying that the cause of the accident must be something "external to the man himself." An observation of SMITH, L.J., in *Walker* v. *Lilleshall Co.*, in which this expression occurs, was merely descriptive of the facts in the particular case referred to. (See [1902] 1 K. B. 45, *per* COLLINS, M.R.)

Sect. 1, Sub-sec. 1 (*contd.*).

Meaning of "accident" (contd.).

In *Sinclair* v. *Maritime Passengers' Assurance Co.*, (1861) 30 L. J. Q. B. 75, it was held that death by sunstroke was not covered by the word "accident," in an insurance policy. *Semble*, death by lightning *is* death by accident (*per* COCKBURN, C.J., S. C.), but *quære*, if such accident would ordinarily be held one "arising out of" a workman's employment. See *London and Glasgow Engineering Co.* v *Falconer*, (1901) 38 S. L. R. 381, *infra*. As to the general question whether the statute would extend to injuries caused by the "act of God," see *River Wear Commissioners* v. *Adamson*, (1877) 2 A. C. 743; 47 L. J. Q. B. 193.

"Arising out of and in the Course of the Employment."—It must be shown that the accident arose *both* out of *and* in the course of the employment.* (*Smith* v. *Lancashire and Yorkshire Railway Co.*, [1899] 1 Q. B. 141; 68 L. J. Q. B. 51, *per* SMITH, L.J.). In that case a ticket-collector was killed while jumping from the footboard of a train in motion; he had jumped on to the footboard, not to collect tickets, but to speak to a personal friend; he had finished collecting tickets for that train, but his day's work was not over. *Held*, that the accident did not arise *out of* his employment. (Cf. the Scotch case, *Callaghan* v. *Maxwell*, (1900) 37 S. L. R. 313, the facts of which are given on p. 12.)

It has been held in Scotland that injury caused to a man, while at work, by the horse-play of fellow-workmen, was not due to "accident *arising out of* the employment." (*London and Glasgow Engineering Co.*

* It is not always easy to give distinct meanings to the two expressions. In the Scotch case, *Devine* v. *The Caledonian Railway Co.*, (1899) 36 S. L. R. 877, a carter in the employment of a railway company was killed in attempting to stop his horse, which bolted for "some unexplained cause." It was argued that, in order to "arise out of" the employment, an accident must be due to some cause which has some relation to the nature of the employment, and that, as here the cause was "unexplained," this was not an accident arising out of the employment. It was held, however, that the man's duty was to stop the horse, and that, as the real cause of the accident was his trying to do so, it arose out of his employment.

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Sect. 1, Sub-sec. 1 (*contd.*).

v. *Falconer*, (1901) 38 S. L. R. 381.) *Per* LORD TRAYNER: "A servant engaged in a factory and struck by lightning in the course of his employment would have no claim to compensation under the Act."

Deviations from duty.

If a workman meets with an accident while executing, without special order, a piece of work that is outside the scope of the particular duty which he is engaged to perform (*e.g.* where a lad employed to do purely unskilled labour, takes upon himself to clean machinery,) the accident does not arise "out of, and in the course of, his employment." (*Lowe* v. *Pearson*, [1899] 1 Q. B. 261; 68 L. J. Q. B. 122.) So also, if during the hours of his employment he turns aside to do something for his own purposes. See *per* VAUGHAN WILLIAMS, L.J., in *Holmes* v. *G. N. R. Co.*, [1900] 2 Q. B. 409; 69 L. J. Q. B. 854: "It does not follow that once a man's employment has begun it necessarily continues till his day's work is done. The workman may during the usual period of his employment do something for himself and not for his master, and in that case, quite apart from any serious and wilful misconduct, he is not in the course of his employment."

This principle applies of course still more strongly when the workman goes outside the due course of his employment in disobedience to a specific order. It is not, however, disobedience to *every* order that will take an act out of the course of the man's employment. The order must be one defining the scope of the employment. See *Whitehead* v. *Reader*, [1901] 2 K. B. 48; 70 L. J. K. B. 596, which explains *Lowe* v. *Pearson*. A workman whose duties included the grinding of his tools was ordered not to touch the machinery used for that purpose, but nevertheless did so in order to replace a band that had slipped, and was injured in consequence. *Held*, that he was in the course of his employment. *Per* COLLINS, L.J.: "If the servant acting within the sphere of his employment violates the order of his master, the latter is responsible. It is, however, obvious that a workman cannot travel out of the sphere of his employment without the order of his employer to do so; and if he does travel out of the sphere of his employment without such an order his acts do not make the master liable. . . . In the present case, if the two spheres of employment had been distinctly separated and defined—namely, the grinding of the tools and the skilled labour of managing the machinery—and the applicant's employment had been limited to the former, and if, while acting in breach of the order limiting his employment, he had met with the accident, the master would not have been liable."

Act done in emergency.

If the act out of which the accident arises, though ordinarily outside the scope of the workman's employment, is one done in a sudden emergency and in the employer's interest (as, for example, if a workman takes upon himself to stop a runaway horse), the act has been held to be one arising out of and in the course of the employment. (*Rees* v. *Thomas*, [1899] 1 Q. B. 1015; 68 L. J. Q. B. 539.)

Cf. the Scotch case of *McQuibban* v. *Menzies*, [1900] 37 S. L. R. 526. In that case a labourer in a steam joinery, at the request of a machineman

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Sect. 1, Sub-sec. 1 (*contd.*).

to whose orders he was under no obligation to conform, attempted to replace the belt of a machine, which had become loose. In so doing he became entangled, and was killed. *Held*, that the accident arose "in the course of his employment." *Per* the LORD PRESIDENT: "The Act does not say 'when doing the work which he was employed to perform,' and it is a fair inference that if it had been intended to limit the right to compensation to such accidents different language would have been used. It must be assumed, therefore, that the legislature used language of wider scope to include cases where a workman intervenes to do something useful or helpful to his master, although outside the special duties, which he is employed to perform." (*See also case next cited.*)

A workman waiting in the necessary intervals of his employment is still in the course of his employment (*Harrison* v. *Whittaker*, (1899) 16 T. L. R. 108).

Accident on way to or from work.

The question when the course of employment begins and ends presents some difficulty. In *Holness* v. *Mackay and Davis*, [1899] 2 Q. B. 319; 68 L. J. Q. B. 724, a workman was employed by contractors, who were executing work for a railway company upon a railway siding. In order to reach his work he had to walk by the side of the railway line, but it was not necessary for him to cross it. His employers had obtained (or were presumed to have obtained) a licence from the railway company entitling him to proceed to his work along this route, but it was not a condition of his contract of service that he should do so. While on the way to his work, seven minutes before the time fixed for its commencement, and 150 yards from the spot, he was killed by a train. *Held*, that his employment had not begun when the accident happened. The case of a man killed or injured after entering upon premises over which the employer has control, and while passing therethrough in order to get to his work, was expressly distinguished.

In *Holmes* v. *The Great Northern Railway Co.*, [1900] 2 Q. B. 409; 69 L. J. Q. B. 854, a workman was conveyed by his employers, the railway company, from King's Cross to Hornsey, where he was to do his work. While proceeding from the train to his work across the railway line, he was killed by another train. *Held*, that the accident happened "in the course of his employment." "There was an implied contract between the masters and the man that, if he would get into a train at King's Cross, they would take him by their line to his work. There was a difference between the beginning of employment and the beginning of work. The employment in this case began at King's Cross, and the workman was in the course of his employment when the accident happened" (*per* SMITH, L.J.).* (Cf. *Tunney* v. *The Midland Railway Co.*, (1866) L. R. 1 C. P. 291.)

* The dictum of SMITH, L.J., in this case to the effect that the employment of a collier begins when he leaves the bank has been explained by the Court of Appeal in an unreported case as being in the very strictest sense *obiter*. It is not to be taken as laying down any general principle with reference to employment in a coal mine.

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Sect. 1, Sub-sec. 1 (*contd.*).

Accident on way to or from work (contd.).

In *Davies* v. *The Rhymney Iron Co.*, (1900) 16 T. L. R. 329, the workman, a collier, was being carried home at the conclusion of his day's work in a train provided by the employers for the convenience of their workmen, along a line of rails owned by the employers. It was not a condition of his contract of service that he should be carried by the train in question. He was injured in jumping from the train. *Held*, that the accident was not one arising out of and in the course of his employment.

SCOTCH CASES.—In *Todd* v. *The Caledonian Railway Co.*, (1899) 1 F. 1047, an engine driver had finished his active duties for the day, but had to report himself at a neighbouring station. While walking along the line on the way to this station he was killed by a train. *Held*, that he was in the course of his employment. "He has entered the company's works, to wit the company's premises, for the purpose of reaching a particular point where it is his duty to be" (*per* the LORD PRESIDENT).

In *Gibson* v. *Wilson*, (1901) 38 S. L. R. 450, a workman, on arriving at the premises where he was employed at the usual hour, found he could not unlock the gate leading thereto. He therefore climbed on to the railings of adjoining premises (not under the control of his employer) and thence got to the premises where he worked. One of the spikes of the railings injured his foot. *Held* (LORD MONCREIFF, *dub.*), that the accident was not one arising out of and in the course of his employment.

It would seem, therefore, that a workman's employment begins when for the purposes of his work he enters upon the premises on which his work is situated, or upon that part of them which is under the control of his employer, and ends when at the conclusion of his day's work he leaves those premises. It does not extend to the time when he is travelling to or from his work, even though he be upon premises owned by the employer, unless it is a condition of his contract of service that he should so travel.

Negligence.

A man is still in the course of his employment even though he goes about it in a negligent manner. (*McNicholas* v. *Dawson*, [1899] 1 Q. B. 773; 68 L. J. Q. B. 470.) Cf. the Scotch case of *Durham* v. *Brown*, (1898) Sc. Sess. Cas. 1 F. 279: "It does not seem to be arguable that a man ceases to be in the course of his employment because he takes a wrong or dangerous method of doing what might be done safely, if it was to be done at all" (*per* LORD KINNEAR).

In *Douglas* v. *The United Minerva Mining Co.*, (the *Times* newspaper, Feb. 20, 1900), a collier returning from work, who might have ascended by the ordinary shaft, induced a boy by a trick to wind him up by a dangerous shaft, which the workmen at the mine were forbidden to use. In the course of the ascent, he met with an accident. *Held*, that the accident arose "out of and in the course of his employment."

The burden of proving that an accident arose out of and in the course of an employment lies upon the workman. (*McNicholas* v. *Dawson*, [1899] 1 Q. B. 773; 68 L. J. Q. B. 470.)

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"Workman."—For definition of "workman," see s. 7, sub-s. 2, p. 65.
"Employer."—For definition of "employer," see s. 7, sub-s. 2, p. 65.

Sect 1, Sub-sec. 1 (*contd.*).

(2.) Provided that:—

(*a.*) The employer shall not be liable under this Act in respect of an injury which does not disable the workman for a period of at least two weeks from earning full wages at the work at which he was employed.

Actual disablement for two weeks necessary.

Disablement for Two Weeks.—The mere fact that a workman is paid by the employer full wages from the date of the accident as a matter of grace does not disentitle him to compensation, if, in fact, he was physically disabled from *earning* full wages at the work at which he was employed (*Chandler* v. *Smith*, [1899] 2 Q. B. 506; 68 L. J. Q. B. 909). The proper procedure in such a case is for the arbitrator to make a declaration of the employer's liability to compensate the workman, and to postpone the assessment of the compensation until such time as the workman ceases to receive the full wages.

(*b.*) When the injury was caused by the personal negligence or wilful act of the employer, or of some person for whose act or default the employer is responsible, nothing in this Act shall affect any civil liability of the employer, but in that case the workman may, at his option, either claim compensation under this Act, or take the same proceedings as were open to him before the commencement of this Act; but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of the employment both independently of and also under this Act, and shall not be liable to any proceedings independently of this Act, except in case of such personal negligence or wilful act as aforesaid.

Alternative remedies.

"Some Person for whose Act or Default the Employer is responsible."—By the Common Law, under the doctrine of "common employment," an employer is not liable to his workmen for injuries occasioned by the act or default of their fellow workmen of whatever grade. Under the Employers' Liability Act (43 & 44 Vict. c. 42, ss. 1, 2) the employer is made responsible for the act or default of the following persons:—

(i.) Any person, in the service of the employer, entrusted by him with the duty of seeing that ways, works, machinery or plant are in proper condition.

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Sect. 1, Sub-sec. 2 (*contd.*).

(ii.) Any person, in the service of the employer, who has any superintendence entrusted to him, while in the exercise of such superintendence.

(iii.) Any person, in the service of the employer, to whose orders or directions the workman at the time of the injury was bound to conform.

(iv.) Any person, in the service of the employer, acting in obedience to improper or defective rules or bye-laws of the employer.

(v.) Any person, in the service of the employer, acting in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf.

(vi.) Any person, in the service of the employer, who has charge or control of any signal, points, locomotive-engine or train upon a railway.

In all these cases the employer, under the Employers' Liability Act, is responsible to the same extent as he would have been responsible at common law, if the person in question had not been in his service.

"**May, at his Option.**"—In all cases where the workman's injury is caused by the "personal negligence or wilful default," either of the employer, or any of the persons above enumerated, the workman has thus an alternative remedy.

When option exercised.

If, however, the workman has either issued his writ in the action, or "claimed compensation," he has exercised his option, and (subject to the *locus pœnitentiæ* afforded by sub-s. 4—as to which, see next note) he must abide by it. See *per* SMITH, L.J., in *Edwards* v. *Godfrey*, [1899] 2 Q. B. 333; 68 L. J. Q. B. 666. It was decided by the House of Lords, in *Powell* v. *The Main Colliery Co.*, [1900] A. C. 366; 69 L. J. Q. B. 758, that a workman has "claimed compensation" as soon as he has made a definite demand on his employer. It would seem, therefore, that when he has once made this definite demand, he cannot afterwards proceed independently of the Act.

SCOTCH CASES.—In *Little* v. *McLellan*, (1900) 37 S. L. R. 287, a man who accepted weekly payments and gave receipts as for payments of "compensation under the Workmen's Compensation Act," was held to have exercised his option. See also *Campbell* v. *Caledonian Ry. Co.*, (1899) 36 S. L. R. 699; and *Hunter* v. *Darngavil Coal Co.*, (1900) 38 S. L. R. 6.

Comparative Advantages of Alternatives.—With regard to the comparative advantages of the alternatives, the following considerations should be borne in mind: If the workman proceeds under the Act, the amount he can recover is prescribed by the First Schedule. If he proceeds at common law, the amount he can recover is limited only by the actual damage he has sustained, and, in calculating this, allowance may be made for doctors' bills, pain, suffering, injury to the system, and other incidental injuries. If he proceeds under the Employers' Liability Act, the principles of assessment are the same, but the amount recoverable is limited to three years' estimated earnings (s. 3). If the result of the accident has been merely to disable the workman from following his employment for a limited period, it will be to his advantage (if he is certain of success) to

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Sect. 1, Sub-sec. 2 (*contd.*).

Comparative advantages of alternatives (contd.).

proceed independently of the Act. Under the Act he can only recover half the wages he has lost. Outside the Act he can recover his full wages and other damages besides. Moreover, even supposing this action fails, the workman may apply to the judge, before whom it is tried, for an assessment of compensation under the Act (see s. 1, sub-s. 4). If the result of the accident is permanent disablement, his most advantageous course will be to proceed under the Act. If he proceeds independently of the Act, he can only recover a lump sum, which is roughly estimated by a jury or judge, and which actual experience shows to be a comparatively moderate one. Under the Act he may be awarded a weekly payment, which may be as high as a pound a week for life, and this, when capitalized, works out at a considerable sum. The only disadvantage of this course is, that the circumstances of the workman may be such as to make it desirable that he should have a lump sum, with which to set up in business. His weekly payments may be commuted for a lump sum, but only on the application of the employer and after the lapse of six months. Speaking generally, the scope of the Act is very much wider than that of the previously existing law, as it makes the employer liable, not merely for negligence, but also for inevitable accidents, and even for accidents for which the workman may be to some extent responsible. A case under the Act is consequently very much easier to prove than a case under the previously existing law, and these facts should be borne in mind in considering the above alternatives.

It must also be remembered that if a workman proceeds independently of the Act, and dies before the case is heard from some cause unconnected with the accident, his claim is barred, and no right of action survives to his estate. See *Pulling* v. *G. E. R. Co.*, (1882) 9 Q. B. D. 110; 51 L. J. Q. B. 453; and note on definition of "WORKMAN," p. 66.

"**Shall not be liable . . . both independently of and also under this Act.**"—This provision should be read together with s. 1, sub-s. 4, which provides that, if an unsuccessful action is brought independently of the Act within six months of the injury or death of the workman, and it therein appears that the employer would have been liable to pay compensation under the Act, the workman (or, in the case of death, his personal representative) may, "then and there," apply to have such compensation assessed. This is a *locus pœnitentiæ* provided for the benefit of the workman, and if he fails to take advantage of it, he may not subsequently institute fresh proceedings. (*Edwards* v. *Godfrey*, [1899] 2 Q. B. 333; 68 L. J. Q. B. 666.) Cf. the Scotch case, *Baird* v. *Higginbotham*, (1901) 38 S. L. R. 479.

Workman has locus pœnitentiæ.

"**Workman.**"—Note that in this sub-section, as throughout the Act, "any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative or to his dependants, or other person to whom compensation is payable." (See s. 7, sub-s. 2, p. 65.)

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Sect. 1, Sub-sec. 2 (*contd.*).

(*c.*) If it is proved that the injury to a workman is attributable to the serious and wilful misconduct of that workman, any compensation claimed in respect of that injury shall be disallowed.

Serious and wilful misconduct.

"**Serious and Wilful Misconduct.**"—As to the meaning of these words, see *McNicholas* v. *Dawson*, [1899] 1 Q. B. 773; 68 L. J. Q. B. 470 (*per* COLLINS, L.J.): "The Workmen's Compensation Act, 1897, takes no account of the negligence of a workman who is injured, and it is no answer to, or defect in the plaintiff's case that the deceased was guilty of negligence, contributory or otherwise. If once it is shown that the accident occurred in the course of an employment under the Act, the defendant has to prove serious and wilful misconduct, and that is the only answer to the plaintiff's claim. Therefore all considerations based on negligence as a factor in the discussion are simply out of place." (As reported in the Law Journal Reports.)

The words "wilful misconduct" were considered in *Lewis* v. *The Great Western Railway Co.*, (1877) 3 Q. B. D. 195; 47 L. J. Q. B. 131, which was an action upon a railway consignment note. "Wilful misconduct is something entirely different from negligence, something far beyond it, whether it is what is called culpable, or gross, or anything of the sort. There must be a doing of something which the person doing it knows will cause risk or injury, or the doing of an unusual thing with reference to the matter in hand, either in spite of warning, or without care, regardless of whether or no it will cause injury" (*per* COTTON, L.J.).

The question of "serious and wilful misconduct" is in every case a question of fact for the arbitrator.* Different minds may take different views of the same state of facts. It is, however, possible upon the decided cases to lay down the following principles:—

Cases on serious and wilful misconduct.

(i.) "Serious misconduct" does not necessarily mean misconduct which is serious *as regards the employer*. If a workman deliberately does an act which involves serious danger to himself and is injured in consequence, an arbitrator is justified in finding that the injury was attributable to his "serious and wilful misconduct." In *John* v. *Albion Coal Co.*, (1901) 18 T. L. R. 28, a collier, in spite of warning by a fellow-workman, persisted in proceeding along a main haulage-road on which a train of

* In Scotland the question is a question of law. See *Dailly* v. *Watson*, (1900) 37 S. L. R. 782, *per* LORD YOUNG: "I am disposed to think that it is a question of law. The language 'serious and wilful misconduct' is language characterizing conduct. The circumstances are matter-of-fact. Whether his conduct is to be characterized as 'serious and wilful misconduct' in the sense of the statute is not necessarily a question of fact." This principle finds some justification in the dicta of LORDS BRAMPTON and MACNAGHTEN in *Hoddinott* v. *Newton, Chambers & Co.*, [1901] A.C. 49, on pp. 56 and 68, but the Court of Appeal declines to treat the question as anything but a question of fact, unless, of course, it can be shown that the arbitrator directed himself upon a wrong principle, and that the misdirection was vital to his decision.

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coal-trams was in motion, instead of taking refuge in a manhole. He was killed by the train. The Court of Appeal upheld the finding of the arbitrator that he was guilty of "serious and wilful misconduct."

Sect. 1, Sub-sec. 2 (*contd.*).

Cases on serious and wilful misconduct (contd.).

(ii.) "Wilful misconduct" means misconduct to which the will is a party. ("The 'mis' part of it, not the conduct, must be wilful," *per* BRAMWELL, L.J., in *Lewis* v. *G. W. R. Co.*, above cited.) In *Whitehead* v. *Reader*, [1901] 2 K. B. 48; 70 L. J. K. B. 546, a man was injured through touching machinery contrary to orders while grinding his tools. The Court of Appeal declined to disturb a finding of the arbitrator that he was not guilty of serious and wilful misconduct. *Per* ROMER, L.J.: "That on the impulse of the moment he should have forgotten the order as to not touching the machinery is not unnatural, and may well be regarded as a venial act and not as being wilful misconduct on his part." Cf. *per* COLLINS, M.R., on very similar facts in *Reeks* v. *Kynoch, Ltd.*, (1901) 18 T. L. R. 34. "The *primâ facie* inference arising on the facts was that the element of wilfulness did not enter at all into what he did, but that he acted on a sudden impulse."

(iii.) While on the one hand the wilful breach of a rule or of an order does not necessarily constitute "serious and wilful misconduct" (*Rumboll* v. *Nunnery Colliery Co.*, (1899) 80 L. T. 42), yet on the other hand there may be "serious and wilful misconduct" without the breach of any rule or order at all (*John* v. *Albion Coal Co.*, above cited).

Examples of cases where the Court of Appeal on the special facts refused to disturb the decision of the arbitrator are the following. They are, of course, of no general authority.

Rumboll v. *Nunnery Colliery Co.*, (1899) 80 L. T. 42. A collier was injured through not keeping his working-place adequately propped. In so doing he infringed the orders of a colliery official to which he was bound to conform, and his conduct was capable of being regarded as an offence against the Coal Mines Regulation Acts and the special rules of the colliery. The arbitrator, on the facts proved, held that the accident was not attributable to his "serious and wilful misconduct." Finding upheld.

In *Douglas* v. *The United Minerva Mining Co.* (the *Times* newspaper, Feb. 20, 1900), a collier returning from work, who might have ascended by the ordinary shaft, induced a boy to wind him up by a dangerous shaft, which the workmen at the colliery were forbidden to use, pretending that he had only placed his tools in the basket. The boy, on discovering that he was winding up the man himself, became confused, and turned the lever the wrong way, with the result that the man fell and was injured. The arbitrator found that the accident was not attributable to the man's "serious and wilful misconduct." *Held*, by the Court of Appeal, that there was evidence on which he could so find. It was observed, however, by COLLINS, L.J., that if the arbitrator had found the other way, he would not have disturbed the finding.

It is not enough that the man injured was guilty of "serious and wilful misconduct." The injury must be in fact "*attributable to*" his

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Sect. 1, Sub-sec. 2 (*contd.*).

Cases on serious and wilful misconduct (contd.).

misconduct. A man (as in the case of *John* v. *Albion Coal Co.*, above cited) may deliberately subject himself to a risk (and so be guilty of "serious and wilful misconduct"), but his injury may be due to some supervening cause. Thus in *Rees* v. *Powell Duffryn Steam Coal Co.*, (1900) 64 J. P. 164, a man was injured in circumstances very similar to those in *John* v. *Albion Coal Co.*, but his injuries were caused not by the train of trams knocking him down, but by the rope, which drew them, coming off the sheave and striking him on the leg. The arbitrator disallowed compensation on the ground of "serious and wilful misconduct," but the Court of Appeal set aside the award, apparently on the ground that there was no evidence on the notes that the swerving of the rope was a risk which the man undertook.

The burden of proving "serious and wilful misconduct" lies, of course, upon the employer. (*McNicholas* v. *Dawson*, [1899] 1 Q. B. 773; 68 L. J. Q. B. 470.)

Scotch Cases.—Several Scotch cases have been decided on these words. They are interesting as illustrations, but of course only as illustrations.

In *Callaghan* v. *Maxwell*, (1900) 37 S. L. R. 313, a farm servant was employed on the platform of a steam threshing machine, her duty being to pass the sheaves to the millman. She was specially directed to remain at her place, and was warned of the danger of moving about. In the absence of the millman she left her place to step across an opening to speak to a friend. In crossing the opening her foot slipped, and she was injured. *Held*, that the accident was attributable to her "serious and wilful misconduct." *Per* the Lord Justice Clerk: "She did a thing which she had been forbidden to do, and against the danger of which she had been warned. I do not think that there can be a more distinct case of wilful misconduct than one in which the person injured is injured in consequence of having disobeyed a specific order such as that given here, and given in order to insure her safety." It was also held that the accident was not one "arising out of and in the course of" her employment. See p. 3.

In *Dailly* v. *Watson*, (1900) 2 F. 1044; 37 S. L. R. 782, a miner, in breach of a special rule of the mine, wore a naked lamp in his cap, while carrying cartridges not enclosed in a case or canister. An explosion occurred in consequence, and he was killed. The arbitrator found no "serious and wilful misconduct." The Court of Session reversed this decision, and held that the facts as proved constituted in law "serious and wilful misconduct."

In *Guthrie* v. *Boase Spinning Co.*, (1901) 38 S. L. R. 483, it was forbidden by an express rule of the factory to clean machinery while in motion, and the machinery was stopped at regular intervals for the cleaning to be done. A girl sustained injuries while acting in contravention of this rule. *Held*, that they were attributable to her "serious and wilful misconduct."

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See also *Fullarton, Hodgart & Barclay* v. *Logue,* (1901) 38 S. L. R. 738; *McNichol* v. *Spiers, Gibb & Co.,* (1899) 1 F. 604; *Todd* v. *Caledonian Ry. Co.,* (1899) 36 S. L. R. 784.

Sect. 1, Sub-sec. 2 (*contd.*).

(3.) If any question arises in any proceedings under this Act as to the liability to pay compensation under this Act (including any question as to whether the employment is one to which this Act applies), or as to the amount or duration of compensation under this Act, the question, if not settled by agreement, shall, subject to the provisions of the First Schedule to this Act, be settled by arbitration, in accordance with the Second Schedule to this Act.

Dispute is condition precedent to arbitration.

"If any Question arises."—These words are important. The sub-section declares the circumstances under which a right to apply for arbitration arises. Two conditions precedent must be satisfied—

(i.) A question must have arisen between the parties.

(ii.) The question must not have been settled by agreement.

See *Field* v. *Longden & Sons,* [1902] 1 K. B. 47; *Jones* v. *G. C. Railway Co.,* (1902) 18 T. L. R. 65. It is contrary to the spirit of the Act to invoke arbitration unless there is some definite question in dispute. "The fact of serving a notice of arbitration does not of itself create a question in dispute" (*per* COLLINS, M.R.). If there is no question, or if the question has been settled, the proper course is not to apply for arbitration and ask for a formal award, but to file a memorandum of the agreement under sched. ii., par. 8. For this purpose it is not necessary that the agreement should be in writing. It may arise by implication from the conduct of the parties.

It is to be observed that "proceedings under this Act" commence before resort is had to arbitration. See the judgment of LORD ROBERTSON in *Powell* v. *The Main Colliery Co.,* [1900] A. C. 366; 69 L. J. Q. B. 758: "The proceedings contemplated by the Act . . . are not primarily judicial proceedings. . . . Arbitration may be required to decide differences arising in the proceedings; but if this occurs it is only incidental to the proceedings, and is not contemplated as a necessary part of them. . . . The proper initiation of the proceedings is not an appeal to arbitration."

If the employer has not denied liability, and has paid, or has offered to pay, the full amount to which the workman could be entitled, no question can be said to have arisen. If in such circumstances a request for arbitration is filed, the best course for the respondents is to file an answer objecting to the jurisdiction of the arbitrator; if the question has been already settled by agreement express or implied, they should at the same time themselves, as they are entitled to do, file a memorandum of

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Sect. 1, Sub-sec. 3 (*contd.*).

the agreement under par. 8 of sched. ii. (See *Jones* v. *G. C. Railway Co.*, above cited.)

"**Employment . . . to which this Act applies.**"—See note, s. 1, sub-s. 1, p. 1, and s. 7, *post*.

"**If not settled by Agreement.**"—See note, *supra*, on words, "IF ANY QUESTION ARISES."

SCOTCH CASE.—In *Dornan* v. *James Allan, Senior & Sons*, (1900) 38 S. L. R. 70, the parties had settled a claim on the basis of a medical report which anticipated that the results of the injury would only last a few weeks. The report turned out to be erroneous. *Held*, that the settlement could not be reopened.

Effect of receipts on claims.

When claims are settled by agreement, employers (or their insurers) commonly take receipts from the workmen purporting to discharge them from all further liabilities. Questions sometimes arise as to the effect of these receipts, where injuries have subsequently been found to involve consequences more serious than those contemplated at the time the receipt was signed. A receipt is not itself a contract, though it is of course strong evidence of a contract. If it can be shown that at the time of the agreement it was not intended that all possible future consequences should be covered by the amount paid, as well as those known and realized at the time, such a receipt is not necessarily a bar. See the recent case of *Ellen* v. *G. N. R. Co.*, (1901) 17 T. L. R. 453; and the remarks of ERLE, C.J., in directing the jury in *Rideal* v. *G. W. R. Co.*, (1859) 1 F. & F. 706: "The question for you will be, whether the plaintiff's mind went with the terms of the receipt. Was he aware of its import and effect at the time he signed it?" See also the following cases: *Lee* v. *Lancashire and Yorkshire Railway Co.*, (1871) L. R. 6 Ch. 527; *Hirschfeld* v. *London, Brighton and S. C. Ry. Co.* (1876) 2 Q. B. D. 1; 46 L. J. Q. B. 94; and *N. B. Ry. Co.* v. *Wood*, 28 S. L. R. 130; and Parsons on "The Liability of Railway Companies," pp. 104–109.

(4.) If, within the time herein-after in this Act limited for taking proceedings, an action is brought to recover damages independently of this Act for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this Act, the action shall be dismissed; but the court in which the action is tried shall, if the plaintiff shall so choose, proceed to assess such compensation, and shall be at liberty to deduct from such compensation all the costs which, in its judgment, have

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been caused by the plaintiff bringing the action instead of proceeding under this Act.

Sect. 1, Sub-sec. 4 (*contd.*).

In any proceeding under this sub-section, when the court assesses the compensation it shall give a certificate of the compensation it has awarded and the directions it has given as to the deduction for costs, and such certificate shall have the force and effect of an award under this Act.

"**Time limited . . . for taking Proceedings,**"—*i.e.* six months from the occurrence of the accident causing the injury, or, in case of death, six months from the time of the death. See s. 2, sub-s. 1, *post.*

"**An Action is brought.**"—See s. 1, sub-s. 2, (*b*), *ante*, p. 7.

"**The Court . . . shall . . . proceed to assess such Compensation.**"—The workman must apply "then and there" (*per* SMITH, L.J., *Edwards* v. *Godfrey*, [1899] 2 Q. B. 333; 68 L. J. Q. B. 666). If he fails so to do he cannot *afterwards* proceed to arbitration under the Act. See note on p. 8.

As soon as application to assess compensation is made, the judge becomes an arbitrator, and the proceedings an arbitration under this Act. See *per* LORD SHAND in *Hoddinott* v. *Newton, Chambers and Co.*, [1901] A. C. 49, at p. 59: "The claim which was made under the Employers' Liability Act of 1880, which failed, suddenly became before him (the County Court Judge) a claim under the Workmen's Compensation Act, 1897, under which he came to act as arbitrator."

An appeal therefore lies to the Court of Appeal (under sched. ii., par. 4) not only from an assessment which has the force and effect of an award (see below), but also from a refusal to assess.

Costs where substantive action fails.

"**Shall be at liberty to deduct . . . Costs.**"—The power of the Court in such a case to deal with the costs incurred in connection with the assessment of the compensation is not limited to this provision. The Court has full power to deal with the costs of the proceeding in its discretion, either by s. 113 of the County Courts Act, 1888, or (if the action is a High Court action) by s. 5 of the Judicature Act, 1890.* In *Cattermole* v. *The Atlantic Transport Co.*, (1901) 18 T. L. R. 102 (see also [1902] 2 K. B. 204; 71 L. J. K. B. 173), a workman proceeded under the Employers' Liability Act and failed. It appeared in the action that he was entitled to compensation under this Act. The judge accordingly assessed the compensation and gave the workman the costs of the whole of the proceedings, *i.e.* both the action under the Employers' Liability Act (in which he failed) and the application to assess compensation (in which he succeeded). *Held*, that it was within his power to do so. See judgment of STIRLING,

* If the dictum of LORD SHAND above reported is correct, the judge deciding the matter has this power by virtue also of sched ii., par. 6.

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Sect. 1, Sub-sec. 4 (*contd.*).

Costs where substantive action fails (contd.).

L.J.: "In general this would not be right; but such an order may be justified by special circumstances, as if (for exmaple) the judge was satisfied that no costs had been caused by the plaintiff bringing an action instead of proceeding under the Act." In the earlier case of *Skeggs* v. *Keen* (the *Times* newspaper, June 19, 1899) it was laid down that where *all* the costs of the dismissed action were caused through the plaintiff proceeding independently of the Act instead of under the Act, it was right that he should receive no costs in respect of such assessment.

"**Certificate of the Compensation.**"—See W. C. Rules, 48, p. 136, and Form 22, p. 169.

(5.) Nothing in this Act shall affect any proceeding for a fine under the enactments relating to mines or factories, or the application of any such fine, but if any such fine, or any part thereof, has been applied for the benefit of the person injured, the amount so applied shall be taken into account in estimating the compensation under this Act.

"**Fine under the Enactments relating to Mines or Factories.**"—See Factory and Workshop Act, 1878, s. 82; Factory and Workshop Act, 1895, s. 13; Coal Mines Regulation Act, 1887, s. 17; Metalliferous Mines Regulation Act, 1872, s. 38.

See Employers' Liability Act, 1880, s. 5.

Time for taking proceedings.

2.—(1.) Proceedings for the recovery under this Act of compensation for an injury shall not be maintainable unless notice of the accident has been given as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury, or, in case of death, within six months from the time of death. Provided always that the want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings, if it is found in the proceedings for settling the claim that the employer is not prejudiced in his defence by the want, defect, or inaccuracy, or that such want, defect, or inaccuracy was occasioned by mistake or other reasonable cause.

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Sect. 2, Sub-sec. 1 (*contd.*).

What is sufficient notice.

"**Notice of the Accident.**"—From the language of sub-sects. 2–5, it is clear that this notice must be in writing. See the decisions on the corresponding sections of the Employers' Liability Act (ss. 4 and 7)—in particular, *Keen* v. *The Millwall Dock Co.*, (1882) 8 Q. B. D. 482; 51 L. J. Q. B. 277. In view of the extensive powers of relief given to the arbitrator under this Act, the fact is of little practical importance (see note below).

What is a sufficient claim.

"**The Claim for Compensation.**"—It has been decided by the House of Lords in *Powell* v. *The Main Colliery Co.*, [1900] A. C. 366; 69 L. J. Q. B. 758, that the "claim" here referred to is not necessarily the initiation of an arbitration, but that a formal demand for compensation made by the workman upon the employer is sufficient. It had been argued in several cases, and had, in fact, been held by the majority of the Court of Appeal in this case, that the making of a "claim" meant the taking of such a step as would give the arbitrator or committee seisin of the matter, and that therefore where the arbitrator was a County Court Judge the making of the claim meant the filing of the Request for Arbitration under Rule 8 of the W. C. Rules, 1898.* It is not now necessary to discuss the reasoning which led to this decision. The judgment of the House of Lords in this case was negative, rather than positive, in its nature, deciding rather what is *not* necessary to constitute a valid claim, than what *is* necessary. The applicant in that case had, within six months of the accident, served upon his employers a document in the following terms: "To the Main Colliery Co., Ltd. Take notice that I claim the sum of 15*s*. per week from the 4th day of January, 1899, until such date as I shall be able to resume work, as compensation for injury received by me, on the 21st day of December, 1898, at your colliery at Bryncoch.—WILLIAM POWELL." It was held that this was a valid claim within the meaning of the section, and it would seem from expressions in the judgments (and particularly in that of LORD SHAND) that a "claim" should specify the names of the parties (that is, applicant and employer), the date of the accident, and the sum demanded as compensation. These expressions are, however, *obiter*, and though no doubt important, cannot be regarded as concluding the question. In Scotland the Court of Session decided, in the case of *Bennett* v. *Wordie*, (1899) 1 F. 855; 36 S. L. R. 643, that the following document was not a valid claim: "Messrs. Wordie and Co.: Thomas Bennett, stableman, 86, Albert Street, Dundee, has consulted me in reference to the death of his son, Thomas Bennett, who was killed while

* Perhaps the most important result of the judgment of the House of Lords in this case is that, provided the workman makes his "claim" in due time, there is no period of limitation within which he must institute proceedings to enforce it. New rules and forms have now been issued which enable the employer, in accordance with this decision, himself to set the machinery of arbitration in motion, and so obtain a final settlement of the claim. See W. C. Rules 10a, 14 (2), 17 (5), 18 (7), 22 (a), 24 (2).

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Sect. 2, Sub-sec. 1 (*contd.*).

What is a sufficient claim (contd.).

in your employment in the Jute warehouse in Mid-Wind, Dundee, in August last. As the accident arose in the course of deceased's employment, and as insufficient precautions were taken for his safety, I am instructed by his father to intimate that he holds you liable for compensation and solatium. This notice is given in terms of the statutes." Two of the judges based their decision upon reasons which must now be considered as erroneous; but the House of Lords, in *Powell* v. *The Main Colliery Co.*, *supra*, while disapproving of these reasons, would seem to have approved the decision in the case. The question whether a claim not specifying any amount is a good claim was raised and reserved in the Scotch case of *G. N. of Scotland Ry. Co.* v. *Fraser*, (1901) 38 S. L. R. 353. It was, however, decided that a request for arbitration in the ordinary form is in itself a valid claim.

Although it has not been expressly decided whether the claim must be made in writing, there is nothing in the Act to suggest that this is necessary. A passage in the judgment of the Lord Chancellor, in *Powell* v. *The Main Colliery Co.*, would seem to indicate that, in his view at least, a mere verbal demand would suffice.

When employer precluded from pleading time-limit.

It should be carefully observed that the "claim" *must be* made within the prescribed period. The want of, or any defect in the *notice*, may be relieved against, but the power of relief does not extend to failure to make the *claim* in proper time. Nevertheless, the failure to make the claim in proper time is not *necessarily* an absolute bar. In the first place, it cannot be relied upon unless pleaded in the Answer filed under r. 17. Although by paragraph 4 of that rule the arbitrator has power to allow the employer to amend his Answer, it is scarcely conceivable that in practice an amendment of this nature would be permitted. In the second place, the arbitrator has jurisdiction to inquire whether there are circumstances in the case to debar the employer from raising the defence. Where, for instance, the employer makes payments to the injured workman under circumstances constituting an agreement to admit liability, but leaving the actual amount of compensation undecided, he will not be allowed, when the workman files his request for arbitration, to set up a plea that the claim is out of time, although no valid claim has in fact been previously made. (*Wright* v. *Bagnall & Sons*, [1900] 2 Q. B. 240; 69 L. J. Q. B. 551.) Mere payment, however, by the employer or his agents to the injured workman is in itself no evidence of an admission of liability under the Act. In *Rendall* v. *Hill's Dry Dock Co.*, [1900] 2 Q. B. 245; 69 L. J. Q. B. 554, the employers, through an insurance society, made weekly payments to an injured workman of one half the amount of his wages for ten months from the first fortnight after the accident, taking a receipt which expressed that the money was received "on account of compensation which may be or become due to me under the Workmen's Compensation Act, 1897." *Held*, that these facts constituted no evidence of any admission on the part of the employers of their liability under the Act to pay

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compensation, and that they were therefore not debarred from pleading that the claim was out of time.*

Sect. 2, Sub-sec. 1 (*contd.*).

Service of Claim.—There are no provisions either in the Act or rules as to the manner in which the claim is to be served. All that appears is that the claim must be "made." It is to be presumed that a claim is not "made" unless it actually reaches the employer. The fact that a letter was posted is not conclusive that it reached its destination. If the receipt is disputed, the question whether it was actually delivered is a question of fact to be tried out by the arbitrator. See *Reed* v. *Harvey*, (1880) L. R. 5 Q. B. D. 184; 49 L. J. Q. B. 294.

Relief.—It is not left to the discretion of the arbitrator to decide whether relief shall be granted. Relief *must* be granted, if it is found as a fact *either* that the employer is not prejudiced, *or* that the "want, defect, or inaccuracy was occasioned by mistake or other reasonable cause."

Grounds for relief. Onus of proof.

It has been expressly decided in Scotland, that if the notice is not served as soon as practicable the onus is on the workman to show that the employer was not prejudiced by the delay. This, however, is not necessarily a matter for preliminary inquiry, but may be left to appear in the course of the proceedings. Only slight evidence is necessary to shift the onus (*Shearer* v. *Miller & Sons*, (1899) Sc. Sess. Cas. 2 F. 114. Cf. the dictum of COLLINS, L.J., in *Osborn* v. *Vicars, Son & Maxim* (1900), as reported in 69 L. J. Q. B. on p. 607: "In order to get out of the vice of want of notice of accident, the workman is by s. 2, sub-s. 1 of the Act bound to show that the employer is not thereby prejudiced"). An employer is not necessarily prejudiced by delay, and an arbitrator is not therefore justified, on proof of delay, in refusing to hear the case. The applicant must be given an opportunity of proving that the employer was not in fact prejudiced. (*McLean* v. *Carse & Holmes*, (1899) Sc. Sess. Cas. 1 F. 879.)

(2.) Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which it was sustained, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

(3.) The notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served.

(4.) The notice may also be served by post by a registered

* It should be noted that both *Wright* v. *Bagnall & Sons* and *Rendall* v. *Hill's Dry Dock Co.* were decided before the decision of the House of Lords in *Powell* v. *The Main Colliery Co.*, and on the assumption that by "claim" was meant the request for arbitration.

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Sect. 2, Sub-sec. 4 (*contd.*).

letter addressed to the person on whom it is to be served at his last known place of residence or place of business, and if served by post shall be deemed to have been served at the time when the letter containing the same would have been delivered in the ordinary course of post, and in proving the service of such notice it shall be sufficient to prove that the notice was properly addressed and registered.

(5.) Where the employer is a body of persons corporate or unincorporate, the notice may also be served by delivering the same at, or by sending it by post in a registered letter addressed to the employer at, the office, or, if there be more than one office, any one of the offices of such body.

These last four sub-sections are identical with the first four paragraphs of s. 7 of the Employers' Liability Act.

Contracting out.

3.—(1.) If the Registrar of Friendly Societies, after taking steps to ascertain the views of the employer and workmen, certifies that any scheme of compensation, benefit, or insurance for the workmen of an employer in any employment, whether or not such scheme includes other employers and their workmen, is on the whole not less favourable to the general body of workmen and their dependants than the provisions of this Act, the employer may, until the certificate is revoked, contract with any of those workmen that the provisions of the scheme shall be substituted for the provisions of this Act, and thereupon the employer shall be liable only in accordance with the scheme, but, save as aforesaid, this Act shall apply notwithstanding any contract to the contrary made after the commencement of this Act.

In case of infants.

"**The Employer may . . . contract with . . . Workmen.**"—It would seem from the analogy of the Employers' Liability Act that the power conferred upon a workman by this section to contract himself out of the Act extends to infants (*Clements* v. *The London and North-Western Railway Co.*, [1894] 2 Q. B. 482; 63 L. J. Q. B. 837), and that such a contract would continue to bind an infant after he came of age.

(2.) The registrar may give a certificate to expire at the end of a limited period not less than five years.

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(3.) No scheme shall be so certified which contains an obligation upon the workmen to join the scheme as a condition of their hiring. **Sect. 3, Sub-sec. 3.**

(4.) If complaint is made to the Registrar of Friendly Societies by or on behalf of the workmen of any employer that the provisions of any scheme are no longer on the whole so favourable to the general body of workmen of such employer and their dependants as the provisions of this Act, or that the provisions of such scheme are being violated, or that the scheme is not being fairly administered, or that satisfactory reasons exist for revoking the certificate, the registrar shall examine into the complaint, and, if satisfied that good cause exists for such complaint, shall, unless the cause of complaint is removed, revoke the certificate.

(5.) When a certificate is revoked or expires, any moneys or securities held for the purpose of the scheme shall be distributed as may be arranged between the employer and workmen, or as may be determined by the Registrar of Friendly Societies in the event of a difference of opinion.

(6.) Whenever a scheme has been certified as aforesaid, it shall be the duty of the employer to answer all such inquiries and to furnish all such accounts in regard to the scheme as may be made or required by the Registrar of Friendly Societies.

(7.) The Chief Registrar of Friendly Societies shall include in his annual report the particulars of the proceedings of the registrar under this Act.

Sub-contracting.

4. Where, in an employment to which this Act applies, the undertakers as hereinafter defined contract with any person for the execution by or under such contractor of any work, and the undertakers would, if such work were executed by workmen immediately employed by them, be liable to pay compensation under this Act to those workmen in respect of any accident arising out of and in the course of their employment, the undertakers shall be liable to pay to any workman employed in the execution of the work any compensation which is payable to the workman (whether

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Sect. 4 (*contd.*).

Sub-contracting (*contd.*).

under this Act or in respect of personal negligence or wilful act independently of this Act) by such contractor, or would be so payable if such contractor were an employer to whom this Act applies.

Provided that the undertakers shall be entitled to be indemnified by any other person who would have been liable independently of this section.

This section shall not apply to any contract with any person for the execution by or under such contractor of any work which is merely ancillary or incidental to, and is no part of, or process in, the trade or business carried on by such undertakers respectively.

Effect of Section.—The general scope of this section has been clearly explained by COLLINS, L.J. in *Wrigley* v. *Bagley and Wright*, [1901] 1 K. B. 780; 70 L. J. Q. B. 538: "It seems to me that the scope of that section is clear enough. It contemplates the case of persons, who, being undertakers in respect of a particular class of business, substitute for themselves a contractor to do some part of that business, and provides that the workmen of such a contractor shall have the same rights against such persons as they would have if they were employed by them. The reason of such a provision obviously is that if a person substitutes another for himself to do that which is his own business, he ought not to escape the liability which would have been imposed upon him if he had done it himself."

Position of contractor.

The question at once arises—What is the position of the contractor? Assuming that he satisfies the definition of "undertaker" given in s. 7, sub-s. 2, is he liable as well as the person with whom he has contracted, or is the latter alone liable? In other words, has the workman an alternative remedy? It has been assumed hitherto that the effect of *Cass* v. *Butler*, [1900] 1 Q. B. 777; 69 L. J. Q. B. 362, and *Cooper* v. *Davenport*, (1900) 16 T. L. R. 266, is that he has not, and that a "contractor" within the meaning of this section (or, as he is commonly called, a "sub-contractor") can never be liable to pay compensation under this Act on the ground that a sub-contractor can never be an "undertaker" as defined by s. 7, sub-s. 2. In view of some recent unreported *dicta* in the Court of Appeal, it would be dangerous to stretch these cases to this extent. All that these cases actually decided was this—that *in the definition clause*, s. 7, sub-s. 2, the words "*undertakers . . . in the case of a building*" only include persons *directly* "undertaking the construction, repair, or demolition," and that consequently *in the case of a building* a sub-contractor is liable neither to compensate the workman, nor to indemnify the undertaker. The expressions used in the judgments are

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Sect. 4 (*contd.*).

Position of contractor (contd.).

certainly wide, but must be taken, it is submitted, as referring to the special class of circumstances with which they were concerned. No doubt the corresponding words defining "undertakers . . . in the case of an engineering work" would be interpreted in the same way, but it is by no means clear that the same principle applies to "undertakers . . . in the case of a factory, quarry, or laundry." Take the case of a shipowner who contracts with a stevedore for the loading or unloading of a ship. For this purpose the shipowner uses the "dock," the dock is a factory, and the shipowner is therefore the occupier of a factory, and consequently an "undertaker." But the stevedore is also using the dock, and, it is submitted on the same reasoning, is equally an "undertaker." An injured man employed by the stevedore would clearly be entitled to compensation from the shipowner; but, on the other hand, there would seem to be no reason why his direct employer, the stevedore, being himself an undertaker, should not be equally liable; nor apparently is there any reason why the shipowner, if he is made to pay the compensation, should not recover an indemnity from the stevedore, as a "person liable independently of this section." *

If this is not the true explanation, then, as was pointed out in the last edition of this work, it is impossible to give any meaning at all to the words, "COMPENSATION PAYABLE TO THE WORKMAN . . . UNDER THIS ACT . . . BY SUCH CONTRACTOR," for, except on this hypothesis, *no* compensation is ever "payable under this Act by such contractor." See the observations of LORD MONCREIFF in the Scotch case of *Bee* v. *Ovens*, (1900) 37 S. L. R. 328.

"**Or in respect of Personal Negligence or Wilful Act independently of this Act.**"—Presumably the meaning of these words is co-extensive with that of the words used in s. 1, sub-s. 2 (*b*), and includes the negligence or wilful act of persons "for whose act or default the employer is responsible."

Effect of section on actions at Common Law and under Employers' Liability Act.

It is very important to notice that, in employments to which this Act applies, this portion of the section incidentally extends the scope of the workman's remedy for injury by accident both at Common Law and under the Employers' Liability Act. A person who heretofore by virtue of the interposition of a sub-contractor has been exempt from all liability, is by these words put in the position of a direct employer, and, as such, is liable to be sued both at Common Law and under the Employers' Liability Act. The words in effect introduce an important amendment

* To take another illustration—a builder, who has contracted to build certain premises, sub-lets part of the work of construction to another employer. For the purpose of this work the sub-contractor uses machinery driven by steam. This machinery then becomes a factory (*McNicholas* v. *Dawson*, [1899] 1 Q. B. 773; 68 L. J. Q. B. 470), and the sub-contractor, using the machinery, becomes by s. 105 of the Factory and Workshop Act, 1901 (see p. 62), the occupier of a factory, and consequently an "undertaker." If this is so, it is submitted that he is none the less an "undertaker" because he is a sub-contractor, and that in spite of *Cass* v. *Butler* he is liable to pay compensation.

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Sect. 4 (*contd.*).

into the law outside the scope of the Act itself, and an action under the Employers' Liability Act, which would otherwise have failed owing to the defendant not being the direct employer (*Murray* v. *Currie*, (1870) L. R. 6 C. P. 24; 40 L. J. C. P. 26), may now by recourse to this provision be successfully maintained.

Right of undertakers to indemnity.

"**Provided that the Undertakers shall be entitled to be indemnified by any other person who would have been liable independently of this Section.**"—This proviso seems designed to include three classes of persons.

(1.) *Sub-contractors who are also undertakers.*—Only undertakers are liable under this Act. Consequently, as far as this Act is concerned, only undertakers are liable to indemnify (*Cooper* v. *Davenport, supra*). If, however, as above maintained, there may be sub-contractors who are also undertakers, and the injured workman has elected to proceed against the person with whom they contracted, then it is submitted such sub-contractors may be called upon by this latter to indemnify him.

(2.) *Sub-contractors (whether undertakers or not), who by reason of negligence are liable to the workman independently of the Act.*—Whoever else may be outside the words of the proviso, these persons are certainly within it. In such cases it is submitted that the sub-contractor is liable to indemnify the undertaker, whether the *proceedings* in which the compensation is sought to be recovered take the form of an arbitration under the Act, or of an action outside the Act. Thus, a workman in the employ of a sub-contractor (engaged upon work to which this section of the Act applies) meets with an accident owing to the negligence of the sub-contractor. He proceeds against the undertaker by action at Common Law, and recovers £100 damages. The undertaker is entitled to be indemnified by the sub-contractor. Another workman, injured under similar circumstances, applies for arbitration under the Act, and is awarded a weekly payment of 10s. It is submitted that in this case, also, the undertaker is entitled to be indemnified by the sub-contractor.*

(3.) "*Strangers*" *who by reason of negligence or other breach of legal duty have made themselves liable to the workman at Common Law.*—Such persons, under s. 6, are liable to indemnify the direct employer. An undertaker who is not the direct employer is not within the scope of s. 6. He is therefore given the necessary protection by these words, which for this purpose place him as against strangers in exactly the same position as the direct employer.

For the procedure, and the limits of the arbitrator's jurisdiction, where an undertaker claims indemnity, see W. C. Rules (1898), 19–23, pp. 121–124. It is presumed that the undertaker may claim to be indemnified

* The position of the contractor who is "liable independently of this section" is thus a very peculiar one. The amount he may have to pay varies according as he is sued directly by the workman for damages, or indirectly by the "undertaker" for indemnity, and varies also in the latter cases according as the workman proceeds against the "undertaker" under the Act, or independently of the Act. See footnote to s. 6, on p. 33.

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by the contractor in respect of costs reasonably incurred in resisting the workman's claim (*Agius* v. *Great Western Colliery Co.*, [1899] 1 Q. B. 413; 68 L. J. Q. B. 312).

What is "ancillary or incidental" work.

"Work which is merely Ancillary or Incidental," etc.—The object of the whole of s. 4 is to deal with cases where a person lets out to another person less substantial than himself work (or part of work) which it is his business to do, *e.g.* a man building a house who sub-lets the plastering or the slating, a colliery owner who lets out the surface work to a banksman, or the cutting of coal or making of roads in a district of his mine to a "contractor." The effect of the last proviso is to exclude from the operation of the section all cases where a person carrying on business on certain premises engages a man to do some independent piece of work upon those premises (*e.g.* to erect, paint, repair, or enlarge a building, to sink a shaft, or to construct a siding). Probably all such cases would be held to come within the words of this proviso, and in all such cases the direct employer of the workman (*i.e.* the contractor) is the only person who can be held liable—and he, of course, only if the employment be one to which the Act applies. See, for example, the case of *Wrigley* v. *Bagley and Wright*, [1901] 1 K. B. 780; 70 L. J. K. B. 538. The occupier of a factory contracted with a firm of engineers to put a new driving-wheel into an engine used in the factory. *Held*, that the work was merely ancillary and incidental to, and no part of or process in the trade or business, etc. *Per* ROMER, L.J.: "Building the factory is no part of or process in the trade or business there carried on."* In *Pearse* v. *The London & South-Western Railway Co.*, [1900] 2 Q. B. 100; 69 L. J. Q. B. 683, the railway company had engaged a contractor to reconstruct a railway station. *Held*, that they were not liable to pay compensation to a workman injured in the course of his work. See, *per* COLLINS, L.J.: "The primary business of a railway company is to carry passengers and goods. The erection of stations does not appear to me to be any part of or process in that business. The term 'railway,' . . . no doubt, includes stations, but they are none the less ancillary to the main purpose of the railway, namely, the carriage of passengers and goods."

In *Herron* v. *Charnley* (the *Times* newspaper, February 19, 1900), a joiner contracted to do certain work in a factory. A man employed by the joiner was injured by accident. *Held*, that the occupiers of the factory were not liable, apparently on the ground that the joiner's work was only "ancillary or incidental" to the work there carried on.

The business of the particular undertakers is that to be regarded, and not that of the general class of employers to which they belong. Whether any work is "part of or process in" the business of an employer must depend upon the special facts of each case. The two following decisions should be noted and compared in connection with this point.

* An appeal against this decision is pending in the House of Lords.

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Sect. 4 (*contd.*).

What is "part of or process in" a trade or business.

In *Knight* v. *Cubitt & Co.*, [1902] 1 K. B. 31; 71 L. J. K. B. 65, a firm of builders contracted to demolish and rebuild a house: it was not the practice of the firm themselves to do any work of demolition. Whenever the work they had undertaken to do involved demolition, they sublet the demolition to other contractors. Following their usual practice, they contracted with a "housebreaker" to do the necessary demolition in this instance. Compensation was claimed against the firm in respect of an accident to a man in the employment of the "housebreaker." *Held*, that the demolition was not merely ancillary to the trade or business carried on by the firm, but was part of or process in the same. On the other hand, in *Bush* v. *Hawes*, (1902) 71 L. J. K. B. 68, a builder contracted with a building owner for the erection of a building; while the work was proceeding, the building owner required that the building should have an iron roof. The builder accordingly sub-contracted with a firm of engineers to supply and fix the iron roof, and the firm of engineers in their turn, having constructed the roof, sub-contracted with another firm to fix it in its place. A man employed by this last firm received an accidental injury which led to his death. The arbitrator found as a fact that the construction and fixing of the iron roof was not part of or process in the trade or business carried on by the builder, but held, nevertheless, that "the providing of iron and parts of iron for a building is a portion of the trade which a builder carries on," and consequently that the contract was one to which the section applied. *Held*, by the Court of Appeal, that having regard to the finding of fact, it could not be said that the work was "part of or process in the trade or business of" the particular builder, and that therefore the contract was not one to which the section applied. The point that the section does not apply to a man working for a person who has sub-contracted with a sub-contractor (and not with the undertaker) does not seem to have been taken. One of the results of this decision is that a man in the position of the applicant cannot obtain compensation from anybody at all. By *Cass* v. *Butler*, *supra*, only persons directly undertaking the construction of the building (or part of the building) can be "undertakers," while by this case the undertaker (in circumstances like those above detailed) escapes liability by virtue of this proviso.

Scotch Cases.—The following cases have been decided in Scotland as to the meaning of these words:—

In *Bee* v. *Ovens & Sons*, (1900) 37 S. L. R. 328, the owner of a factory employed a carting contractor to bring to the factory the raw material used in the process of manufacture there carried on. A carter in the employ of the contractor was injured by accident in the precincts of the factory. *Held*, that the employment was not merely "ancillary and incidental to," but was "part of, or process in, the trade or business."

In *Greenhill* v. *The Caledonian Railway Co.*, (1900) 37 S. L. R. 524, a railway company charged through rates for carriage of goods, including

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cost of collection. The collection was done by a carting contractor, and a man in the employment of the latter was injured by accident in the precincts of a railway station. *Held*, that the work was not "merely ancillary, etc." See Addenda.

Sect. 4 (*contd.*).

The case of *Burns* v. *The North British Railway Co.*, (1900) 37 S. L. R. 448, is now recognized as being in conflict with the English decisions, and is no longer followed. See *Dundee & Arbroath Joint Railway* v. *Carlin*, (1901) 38 S. L. R. 635.

Compensation to workmen in case of bankruptcy of employer.

5.—(1.) Where any employer becomes liable under this Act to pay compensation in respect of any accident, and is entitled to any sum from insurers in respect of the amount due to a workman under such liability, then in the event of the employer becoming bankrupt, or making a composition or arrangement with his creditors, or if the employer is a company of the company having commenced to be wound up, such workman shall have a first charge upon the sum aforesaid for the amount so due, and the judge of the county court may direct the insurers to pay such sum into the Post Office Savings Bank in the name of the registrar of such court, and order the same to be invested or applied in accordance with the provisions of the First Schedule hereto with reference to the investment in the Post Office Savings Bank of any sum allotted as compensation, and those provisions shall apply accordingly.

(2.) In the application of this section to Scotland, the words "have a first charge upon" shall mean "be preferentially entitled to."

"**Workman.**"—Note that in this Act (by s. 7, sub-s. 2, *post*), "any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative or to his dependants, or other person to whom compensation is payable."

Procedure under this Section.—See Rules 51–58, *post*, pp. 138–140; Forms 25–29, Appendix A.

"**The Judge . . . may direct.**"—It has been decided that no appeal lies to the Court of Appeal from a refusal of a judge to make such an order. *Leech* v. *Life & Health Assurance Association*, [1901] 1 K. B. 707; 70 L. J. K. B. 544. See note on sched. ii., par. 4, p. 99. An appeal would no doubt lie to the Divisional Court under s. 120 of the County Courts Act, 1888, and s. 45 of the Judicature Act, 1873.

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Sect. 5, Sub-sec. 2 (*contd.*).

Workman's position where employer bankrupt.

Effect of Bankruptcy, etc., where Employer insured.—Where the employer is wholly insured, the position of the workman who has obtained an award or a recorded agreement is simple. By virtue of the rules above referred to (W. C. Rules, 51–58), he is entitled to apply to the County Court Judge for an order, which preserves intact all the rights he had against the employer, and makes them available against the insurers. Having obtained this order, he has no occasion to concern himself with the proceedings in his employer's bankruptcy.*

It would seem that the effect of this section is to put the workman in the position of a secured creditor. (See Bankruptcy Act, 1883, ss. 9, 168, sched. ii., pars. 9–17.)

In the unlikely event of the employer being only partially insured, presumably the workman must value his security and prove for the balance, as in the case of an uninsured employer.

Effect of Bankruptcy, etc., where Employer not insured.—If the employer is not insured, the workman is in the position of an ordinary unsecured creditor. Where the compensation is a lump sum, and has been already awarded before the bankruptcy, the case presents no difficulties. The workman must prove for the amount and receive a dividend.

Where the compensation awarded is a weekly payment, the case is more complex. It is, of course, open to the employer, or the trustee in his bankruptcy, or, in the case of a company, the liquidator, where a weekly payment has been continued for six months, to apply under sched. i., par. 13 for its redemption by the payment of a lump sum, and this lump sum can then be proved for in the ordinary way.

If this course is not, or cannot be taken, the liability of the master to pay to the workman a weekly sum, until it is varied, or terminated by the order of the Court, must be regarded as a future debt, subject to a contingency. (See Bankruptcy Act, 1883, s. 37; Companies Act, 1862, s. 158; Judicature Act, 1875, s. 10.) A value must accordingly be set upon it by the trustee or liquidator. In the case of Bankruptcy, any person aggrieved by the estimate of the trustee may appeal to the Court. (Bankruptcy Act, 1883, s. 37, sub-s. 5.)† So also in the case of a

* In most forms of insurance policy the insurers simply stand in the shoes of the employer, and, if during the continuation of the policy the employer becomes liable to pay compensation by way of weekly payments, the insurers become liable for all future payments, whether the premiums continue to be paid or not, provided the original liability accrued during a period for which a premium had been paid. In some forms, however, the liability of the insurers to indemnify the employer against weekly payments only continues as long as the employer pays the annual premium provided for by the policy. In such a case, if the employer becomes bankrupt, or, being a company, is wound up, it may well be that the workman will have no further right against the insurers. This contingency should be very carefully borne in mind, and, if necessary, a proof should be entered in the employer's bankruptcy. An inspection of the policy may be obtained under rule 58 of the W. C. Rules, 1898, *post*, p. 140.

† If it is declared by the Court, that the value of a debt is incapable of being fairly estimated, the debt is not provable in the bankruptcy. (Bankruptcy Act,

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company which is being wound up by order of the Court (Companies (Winding-Up) Act, 1890, s. 24), and in most cases where a company is being wound up subject to the supervision of the Court (Companies Act, 1862, s. 147). Where, however, the company is being wound up voluntarily, a creditor has no access to the Court except through the Liquidator. (Companies Act, 1862, s. 138.) If the liquidator in such a case refuses to submit the question to the Court, the workman may either petition to have the winding-up continued under the supervision of the Court, or he may apply for an injunction to prevent the liquidator concluding the winding-up of the company without making due provision for his claim. (See *Gooch* v. *London Banking Association*, (1886) 32 Ch. D. 41.) The workman cannot petition for a supervision order unless his claim has been already liquidated by an award or an agreement. (*In re Pen-y-Van Colliery Co.*, (1877) 6 Ch. D. 477; 46 L. J. Ch. 390.)

Sect. 5, Sub-sec. 2 (*contd.*).

Bankruptcy before award.

Where Bankruptcy, etc., occurs before Compensation ascertained.—If the bankruptcy of the employer or the winding-up of the company takes place before the application for arbitration, or before the award has been made, very great difficulties arise. To deal first with bankruptcy, the first question to be determined is, whether a claim for compensation (not liquidated by an award or by agreement) is a debt provable in the bankruptcy. By s. 37 (1) of the Bankruptcy Act, 1883, "Demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise, or breach of trust, shall not be provable in bankruptcy." The question therefore is, whether a claim for compensation is a "demand in the nature of unliquidated damages." It is submitted that the claim is not a demand for "damages" at all. "Damages" are defined by LORD COKE as "the recompense that is given by the jury to the plaintiff . . . for the wrong the defendant hath done unto him" (Co. Litt. 257*a*).

1883, s. 37, sub-s. 6.) It is unlikely that the Court would ever make such a declaration in the case of a weekly payment under the Act. (See *Hardy* v. *Fothergill*, (1888) 13 A. C. 351; 58 L. J. Q. B. 44.) If, in any case, the Court did make such a declaration, the debtor would presumably be still liable for the weekly payments, as it is only from debts provable in the bankruptcy that his bankruptcy discharges him. (Bankruptcy Act, 1883, ss. 9 and 30.) The payments might then probably be enforced against him by s. 5 of the Debtors' Act, 1869, read in conjunction with sched. ii., par. 8 of this Act. (Cf. *Linton* v. *Linton*, (1885) 15 Q. B. D. 239; 54 L. J. Q. B. 529, and see note, *post*, sched. ii., par. 8.)

Some of the expressions used in *Linton* v. *Linton*, which was a case dealing with the question of alimony, go so far that it may be quoted as an authority for the proposition that the liability of an employer to make weekly payments under this Act is not a debt provable in the bankruptcy. See, in particular, *per* BAGGALLAY, L.J.: "The alimony may be varied from time to time, and withdrawn or increased, so that there is no means of putting a value upon it." See, also, *per* FRY, L.J., in *Morgan* v. *Hardy*, (1887) 18 Q. B. D. 646: 56 L. J. Q. B. 363. Alimony, however, stands upon a very special footing. See the judgment of VAUGHAN WILLIAMS, J., in *In re Hawkins, ex parte Hawkins*, [1894] 1 Q. B. 25. Alimony, moreover, varies with the circumstances of the husband; payments under the Act vary with the earning capacity of the workman. The latter may well be capable of estimation, although the former may not. The matter cannot be regarded as free from doubt.

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Sect. 5, Sub-sec. 2 (*contd.*).

The liability imposed upon the employer by the Act is not a liability to pay "damages." It is independent of any breach of duty, whether in tort or contract, and is simply a statutory liability to pay money. It is therefore within the words of s. 37, sub-s. 3 of the Bankruptcy Act, 1883, and is consequently a provable debt. It may be compared to the liability imposed upon landlords by the Agricultural Holdings Act, 1883 (now 1900).*

Effect of bankruptcy on proceedings.

Assuming, therefore, that the claim is a provable debt, the next question is what steps the workman should take to get the amount due to him ascertained. He may not apply for arbitration against the debtor without leave of the Court (Bankruptcy Act, 1883, s. 9). If, therefore, his claim is disputed by the trustee, he should apply to the Court for leave to commence proceedings, and this will, no doubt, be given on terms that the trustee be joined as a respondent. (For procedure to be adopted, see below.) If the workman has already commenced proceedings, the bankruptcy does not of itself operate as a stay, but the Court, on application being made, may order the proceedings to be stayed on such terms as it may think just (Bankruptcy Act, 1883, s. 10). In any case the trustee should be joined as a respondent, in order that the estate out of which the dividend is to issue may be represented. The case is one which seems to come within the express words of r. 2 of the W. C. Rules, 1898, *post*, p. 110. The arbitration can then proceed in the ordinary way, and when the award is given a proof can be entered for the amount so ascertained, or, if the employer is insured, an order can be applied for against his insurers under this section.

Effect of winding-up on proceedings.

Where the employer is a company and the company is being wound up, the same considerations, with the necessary modifications, are applicable to the case. See Companies Act, 1862, ss. 85, 87, and 158, and Judicature Act, 1875, s. 10. It should be observed that if the company is solvent, no question can arise as to whether the claim for compensation is a provable debt, the words of s. 158 being wide enough to cover the case. If the company is not solvent, then s. 10 of the Judicature Act, 1875, applies the principles of the Bankruptcy Act to the winding-up, and the same question arises as has been discussed above.

Procedure to be adopted.

As to the procedure to be adopted, in the case of bankruptcy the application for leave to commence proceedings against a bankrupt is one that may be made in chambers. See Bankruptcy Rules, 1886, r. 6. In the High Court it must be made to the judge himself. See order of CAVE, J., dated Jan. 1st, 1884, limiting and defining powers given to the

* The point is of great importance, for this reason, that if the claim is not a provable debt before the date of the receiving order, it does not become provable by being liquidated afterwards. See *In re British Gold Fields of West Africa*, [1899] 2 Ch. 7; 68 L. J. Ch. 412. If, therefore, the claim is not a provable debt, the workman (or his dependants) cannot get compensation from the estate, nor can the employer be released from the obligation to pay the compensation by his discharge in his bankruptcy.

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registrar by s. 99 of the Bankruptcy Act, 1883, and r. 7 of the Bankruptcy Rules, 1886. (The note *ad loc.* in Williams's Bankruptcy Practice should be referred to.) In the County Court the jurisdiction of any registrar may be limited and defined by any general or special directions of the judge of the County Court. Subject to any such general or special directions (as to which the registrar should first be consulted) the application may be heard by the registrar in chambers. See Bankruptcy Rules, 1886, r. 7.

Sect. 5, Sub-sec. 2 (*contd.*).

Where the employer is a company and an order has been made for its winding-up before the workman has filed a request for arbitration, the application for leave to do so is also an application that may be made in chambers. See Companies Winding-Up Rules, 1890, rules 5 and 6; Companies Winding-Up Rules, 1892, r. 3. In the case of companies there is no order corresponding to that of CAVE, J., above referred to. Subject, therefore, to any special directions of the judge, the application, where the case is in the High Court, should be made to the registrar. Where the company is being wound up in the County Court, the case is governed by the Companies Winding-Up Rules, 1890, r. 2 (*b*). Subject, therefore, to any general or special directions of the County Court Judge (as to which the registrar should first be consulted) the application should be made to the County Court registrar in chambers. In connection with this subject, it must be borne in mind that all County Courts have not jurisdiction under the Bankruptcy Acts and the Companies Acts. See County Courts (Bankruptcy and Companies Winding-Up) Jurisdiction Order, 1899.

Where accident happens after receiving order.

If the accident happens *after* the Receiving Order, while the employer's business is being carried on on behalf of the creditors by the Official Receiver or the trustee, the Official Receiver or the trustee, as the case may be, is liable as employer, and the workman is consequently entitled to full compensation out of the estate and not merely to a dividend. It would seem from a close consideration of the words of this section ("where any employer *becomes* liable . . . and *is entitled* to any sum from insurers . . . *then* in the event of the employer becoming bankrupt . . ."), that they do not apply to the case of an accident after the bankruptcy, and that in such a case the workman would have no rights against the insurers under this section.

The costs incident to the arbitration are in the same position as the claim, and if the claim is a provable debt, the costs are also provable. See *In re The British Gold Fields of West Africa*, cited p. 30 *n.*

Recovery of damages from stranger.

6. Where the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof, the workman may, at his option, proceed either at law against that person to recover

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Sect. 6 (*contd.*).

damages, or against his employer for compensation under this Act, but not against both, and if compensation be paid under this Act, the employer shall be entitled to be indemnified by the said other person.

"**The Workman.**"—Note definition of WORKMAN, s. 7, sub-s. 2, p. 65.

"**May, at his option, proceed.**"—The effect of these words is very far from clear. They seem to mean that the workman is put to his election, and may not pursue his alternative remedies simultaneously. If, therefore, it is brought to the notice of an arbitrator in a case within this section that an action at law in the same matter is proceeding against a stranger, it is presumed that he must refuse to hear the application. In the same way, if it is brought to the notice of a judge in an action against a stranger, that the workman has commenced proceedings against his employer for compensation, it is presumed that he must refuse to try the case.

When option exercised

The question then arises—at what point must the workman be held to have exercised his option? In the case of an action at common law the commencement of proceedings is the issuing of the writ. In the case of proceedings under this Act, the commencement of the proceedings, according to *Powell* v. *The Main Colliery Co.*, [1900] A. C. 366; 69 L. J. Q. B. 758, would seem to be, not the Request for Arbitration, but the "claim" for compensation addressed to the employer. (See notes on s. 2, sub-s. 1.) If, therefore, a workman has either issued a writ against the stranger, or formally claimed compensation from the employer, it would seem that he has exercised his option. A mere notice of accident under s. 2, sub-s. 1, is not a proceeding, and a workman who has given such a notice has not thereby exercised his option. *Perry* v. *Clements*, (1901) 17 T. L. R. 525.

Remedies may be pursued successively.

While, however, the workman may not pursue his remedies simultaneously, it is submitted that there is nothing in the section to prevent his pursuing them successively, although, of course, he cannot recover against both stranger and employer. Supposing that the workman brings an action against the stranger, and it is decided in that action that the stranger is not liable, there is nothing in this section to prevent him from then proceeding to claim compensation from his employer. If it has been decided by a competent tribunal that the injury in respect of which compensation is sought was not "caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof," the case is not one within the section, and there is nothing to deprive the workman of his ordinary rights. Similarly, supposing that the workman first claims compensation from the employer, and it is decided in the arbitration that no compensation is payable, it is submitted that there is nothing in this section to prevent him from thereupon pursuing his ordinary remedies against the stranger. The injury not

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being an "injury for which compensation is payable under this Act," the case is not within the section.

Sect. 6 (*contd.*).

If there is any doubt as to the liability of the stranger, the more prudent course for the workman will be to proceed against the employer for compensation. Claims for compensation must, by s. 2, sub-s. 1, be made within six months. If the workman proceeds against a stranger at common law the action will probably not be determined within six months, and if he loses the action it will then be too late to claim compensation, whereas if he claims compensation and fails to obtain it, he has still (assuming the correctness of the conclusions above submitted) an ample margin in which to pursue his remedy against the stranger at common law.

The above conclusions are submitted with some confidence, but the questions with which they deal must be considered as awaiting further elucidation.

Procedure as to indemnity.

"The Employer shall be entitled to be indemnified."—See Rules, 19–23, pp. 121–124; Form 13, Appendix A. It should be observed that the arbitrator has no power (except by consent) to make any order against the stranger, except that in any subsequent proceedings he shall not be entitled to dispute the validity of the award as against the workman's employer. In the absence of such consent, the right of the employer to be indemnified by the stranger must be pursued by the ordinary processes of law.

It is presumed that the employer may recover, as one of the items in the indemnity, costs reasonably incurred in resisting the workman's claim. (*Agius* v. *Great Western Colliery Co.*, [1899] 1. Q. B. 413; 68 L. J. Q. B. 312.) *

Application of Act and definitions.

7.—(1.) This Act shall apply only to employment by the undertakers as herein-after defined, on or in or about a railway, factory, mine, quarry, or engineering work, and to employment by the undertakers as herein-after defined on in or about any building which exceeds thirty feet in height, and is either being constructed or repaired by means of a scaffolding, or being demolished, or on which machinery driven by steam, water, or other mechanical

* The stranger is liable upon very different scales, according as he is sued directly by the workman for damages, or indirectly by the employer for indemnity. If he is sued by the workman, the damages are assessed by a jury or judge according to the ordinary principles of the law. If he is sued by the employer, the damages have been already assessed by another tribunal on the scale prescribed by the Act. The "contractor," in s. 4, who is "liable independently of" the section is in a similar anomalous position.

For the comparative advantages of proceeding under the Act, or independently of it, see note to s. 1, sub-s. 2 (*b*), on p. 8.

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Sect. 7, Sub-sec. 1 (*contd.*).

power, is being used for the purpose of construction, repair, or demolition thereof.

"**Undertakers.**"—See definition of "undertakers," p. 58, and cases there cited.

"**Only to Employment by the Undertakers.**"—These words are very important. A workman may be employed "on or in or about a mine, quarry, or engineering work," or a building within the Act, but he is not entitled to compensation unless his employer is an "undertaker." Thus, in *Francis* v. *Turner Bros.*, [1900] 1 Q. B. 478; 69 L. J. Q. B. 182, a man was employed in removing machinery from a factory, but as his employers were not the occupiers of the factory in question, but of another factory, they were not "undertakers," and the employment was consequently not one to which the Act applied.

Employment may be of subsidiary nature only.

The employment may be of a subsidiary or incidental nature. It is not necessary that it should be employment in the main business or process of the undertaking.

See the following SCOTCH CASES.—In *Monaghan* v. *United Collieries Co.*, (1900) 38 S. L. R. 92, the colliery company were using their engines to remove sand from a sand-hole abutting on one of their sidings under a contract with the owner of the sand-hole, and a man in their employ was injured by accident while driving one of the engines. *Held*, that the employment was within the Act. *Per* LORD KINNEAR: "The carrying of sand for hire was not part of the proper business of the respondents as a colliery company. But that seems to me to be nothing to the purpose. They are not undertakers in respect of their mercantile business, but in respect of their ownership of the mine and siding, and their employment of workmen in these dangerous places." In *Caledonian Railway Co.* v. *Breslin*, (1900) 37 S. L. R. 873, a man in the employ of a railway company was injured while shoeing a horse in a smithy attached to a station. The horses shod in the smithy were used in connection with the public traffic carried on by the railway company. *Held*, that the employment was within the Act. *Per* the LORD PRESIDENT: "He was fitting a part of the railway plant for the purpose of conducting the traffic, as much as an engine-fitter or an engine-cleaner preparing an engine to haul a train." In *Devine* v. *The Caledonian Railway Co.*, (1899) 36 S. L. R. 877, a carter, in the employment of a railway company, was killed while endeavouring to stop his horse, which had bolted. It was argued that the Act only applied to employment on or in connection with the railway itself—but it was held by the Court of Session that the employment was within the Act.

There is nothing in these cases in conflict with *Milner* v. *The Great Northern Railway Co.*, [1900] 1 Q. B. 795; 69 L. J. Q. B. 427 (see p. 43). In that case the applicant (a waitress in a refreshment room) was excluded from the Act not because she was not employed about the main business of the company, but because the *place* in which she was employed was

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not part of the "station" within the meaning of the Regulation of Railways Act, 1873, and she was consequently not employed "on, or in, or about a railway" within the meaning of this Act.

Sect. 7, Sub-sec. 1 (*contd.*).

"**On or in or about.**"—"The word 'about' means 'in close proximity to'" (SMITH, L.J., in *Powell* v. *Brown*, below cited). "The word 'about' . . . is a geographical expression denoting physical contiguity. . . . It is not used in the sense in which we use it when we speak of a workman being about the business of his employer. . . . I should say that where the main purpose of the business carried on in a factory involved the use of land outside the physical limits of the factory, persons so employed outside the factory limits would be employed, not on or in, but *about* the factory. . . . To my mind the Act does not apply to persons employed about the business of a factory where such employment does not involve physical contiguity to the factory within such limits as are reasonably necessary for the ordinary business carried on there" (COLLINS, L.J., in *Fenn* v. *Miller*, below cited).

"About" denotes physical contiguity.

In *Powell* v. *Brown*, [1899] 1 Q. B. 157; 68 L. J. Q. B. 151, a carter was employed in loading timber from a timber factory on to a cart standing in the street, close to the entrance of the factory. *Held*, that the employment was "about" the factory. In *Lowth* v. *Ibbotson*, [1899] 1 Q. B. 1003; 68 L. J. Q. B. 465, a carter was employed in delivering goods at a distance of a mile and a half from his employer's factory. *Held*, that he was not employed "about" the factory. In *Fenn* v. *Miller*, [1900] 1 Q. B. 788; 69 L. J. Q. B. 439, a workman was conveying water in a water-cart for the supply of a steam-engine, which was a "factory" within the meaning of the Act. He was injured by accident when he was 110 yards from the steam-engine. *Held*, that the employment was not "about" the steam-engine (see the judgment of COLLINS, L.J.). In *Turnbull* v. *The Lambton Collieries, Ltd.*, (1900) 16 T. L. R. 369, an engine-driver, in the employ of a colliery company, was injured while driving a train, containing coal from the colliery, on a private railway belonging to the company, at a spot three-quarters of a mile from the colliery. *Held*, that he was not employed "about" a mine. (See **Mine**, p. 55, and cf. *Davies* v. *The Rhymney Iron Co.*, [1900] 16 T. L. R. 329.)

Cases on "on, or in, or about."

SCOTCH CASES.—A man repairing a ship 550 yards from the yard at which he is usually employed is not being employed "about" the yard. *Barclay, Curle & Co.* v. *McKinnon*, (1901) 38 S. L. R. 321 (see p. 71). A carter driving a horse 800 yards from his employer's factory is not being employed "about" the factory (*Kent* v. *Porter*, (1901) 38 S. L. R. 482). A man in the employment of a railway company was injured while on a private siding belonging to a trading company, and used by the railway company exclusively for the traffic of the trading company, at a spot three-quarters of a mile from the premises of the railway company. *Held*, that he was not employed *about* a railway. *Per* LORD MONCREIFF: "The line is a private line, and the position of the

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Sect. 7, Sub-sec. 1 (*contd.*).

respondents in regard to it is just the same as if in a town they had sent their carts to the private premises of a trader for the purpose either of delivering goods consigned or taking away goods for carriage by their line" (*Brodie* v. *N. B. Railway Co.*, (1900) 38 S. L. R. 38). See also *Bell* v. *Whitton*, (1899) 36 S. L. R. 754, and cases noted on p. 43.

"About" as applied to "engineering work."

The words impute locality in the case of an engineering work as much as in the case of a railway, factory, mine, quarry, or building. In *Chambers* v. *The Whitehaven Harbour Commissioners*, [1899] 2 Q. B. 132; 68 L. J. Q. B. 740, a man was engaged on a hopper a mile and a half out at sea, in connection with a steam-dredger in a harbour. *Held*, that the employment was not within the Act. "Assuming that the work done by the dredger was engineering work, the workman was not at the time of the accident employed 'on, in, or about' the locality of the engineering work of the dredger" (*per* SMITH, L.J.).

A somewhat different principle seems to have been adopted in the following Scotch case.

In *Middlemiss* v. *Middle D. C. of Berwickshire*, (1900) Sc. Sess. Cas., 1 F. 393, a road was being repaired by means of a steam-roller and a watering cart. The man in charge of the watering cart was killed while watering a piece of the road over a quarter of a mile from the steam-roller. *Held*, that he was employed "about an engineering work." *Per* the LORD PRESIDENT: "The steam-roller and water-cart were each part of the machinery or plant generally required and used in the composite process of road repair, and accordingly the deceased was employed in that composite process."

Employment on ship in dock within the Act.

A man employed on a ship in a dock is employed "on, or in, or about" the dock. This is the effect of the decision of the House of Lords in *Raine* v. *Jobson & Co.*, [1901] A. C. 404; 70 L. J. K. B. 771, overruling *Flowers* v. *Chambers*, [1899] 2 Q. B. 142; 68 L. J. Q. B. 648. *Per* LORD HALSBURY, L.C.: "I am not able at present to follow the train of reasoning by which the respondents sought to suggest that because the wooden structure which was inside the dock and to which the work was being applied was a ship which when floated into the sea would be capable of being treated as a separate entity and would be free from the operation of the Act generally, that conveys to the dock in which the ship is placed the immunity which the ship itself would possess, if sailing upon the high seas." (See note on p. 48, and Introduction, pp. vii. *seq.*)

"**Railway.**"—See definition of "railway," p. 42.

"**Factory.**"—See definition of "factory," p. 43.

"**Mine.**"—See definition of "mine," p. 55.

"**Quarry.**"—See definition of "quarry," p. 56.

"**Engineering Work.**"—See definition of "engineering work," p. 57.

"**Building.**"—Neither the Act itself, nor the Factory and Workshop Act, 1895, from which these words were taken (s. 23), contains any definition of the word "building." From the analogy of the interpretation of the word "wharf" in *Haddock* v. *Humphrey*, [1900] 1 Q. B. 609; 69 L. J. Q. B.

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327, it is to be presumed that the word is to be interpreted in its ordinary and popular sense. See the judgment of COLLINS, L.J., in that case: "I think that the only safe standard to apply in interpreting this section of the Act is to give to the words 'dock,' 'wharf, and 'quay,' their ordinary and popular sense. Any attempt to put refined meanings upon these words would, I think, be fraught with difficulties, which we should feel in deciding future cases."

Sect. 7, Sub-sec. 1 (*contd.*).

Construction of Sentence.—The exact construction of this part of the sub-section should be carefully noticed. It comprises three classes of buildings :—

What buildings within the Act, and why.

(i.) Buildings over thirty feet in height which are being constructed or repaired by means of a scaffolding.

(ii.) Buildings over thirty feet in height being demolished (with or without scaffolding).

(iii.) Buildings, of whatever height, in course of construction, repair, or demolition on which machinery driven by steam, water, or other mechanical power is being used for the purpose of such construction, repair, or demolition.

See hereon, *Mellor* v. *Tomkinson & Co.*, [1899] 1 Q. B. 374; 68 L. J. Q. B. 214. *Per* CHITTY, L.J.: "The Legislature seems to have considered that buildings above thirty feet in height, and buildings on which machinery is being used, are two distinct classes of buildings, each of which expose the workmen employed on them to accident." Cf. the Scotch case, *Murnin* v. *Calderwood*, (1899) 36 S. L. R. 648.

A somewhat different theory was put forward in explanation of this classification by LORD MACNAGHTEN in *Hoddinott* v. *Newton, Chambers & Co.*, [1901] A. C. on p. 56. "The provision as to the height of the building and the provision with reference to a scaffolding serve roughly to draw a line of demarcation between employments with which the Act is not concerned and those to which it is intended to apply. They were intended to exempt a certain class of buildings, and perhaps a certain class of builders of the humbler sort from the operation of the Act. They are obviously copied from the Factory and Workshop Act, 1895, where the same provisions serve a somewhat similar purpose."

Height, when and how to be measured.

"**Which exceeds Thirty Feet in Height.**"—These words have reference to the height of the building at the time of the accident (*Billings* v. *Holloway*, [1899] 1 Q. B. 70; 68 L. J. Q. B. 16; *Knight* v. *Cubitt & Co.*, [1902] 1 K. B. 31; 71 L. J. K. B. 65. The fact that a building in course of construction will ultimately exceed that height, or that a building in course of demolition once exceeded it, is immaterial. The fact that a building under thirty feet in height communicates with another building over thirty feet in height does not make the first building over thirty feet in height (*Rixsom* v. *Pritchard & Renwick*, [1900] 1 Q. B. 800; 69 L. J. Q. B. 494).

The Act does not say how the height is to be measured. It is settled, at any rate, that the measurement is to be made from the extreme height

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Sect. 7, Sub-sec. 1 (*contd.*).

of the building. In *Hoddinott* v. *Newton, Chambers & Co.*, [1901] A. C. 49; 70 L. J. K. B. 150, the building measured twenty-eight feet to the top of the walls and thirty-six feet to the top of the roof. *Held*, by the House of Lords, confirming the Court of Appeal, that the building was over thirty feet in height.

Height, when and how to be measured (contd.).

What is the lowest point of a building for the purpose of this measurement has not yet been decided.* In *McGrath* v. *Neill & Sons*, (1901) 71 L. J. K. B. 58, a building in course of construction measured twenty-three feet from the level of the street, twenty-nine feet from the basement floor, thirty-three feet from the bottom of the footings above the concrete foundations, and thirty-one feet from the top of the footings, which was the highest point covered in. *Held*, that the arbitrator was justified in finding that the building was over thirty feet in height. The judgment of COLLINS, M.R., throws little light upon the general question: "Did this building at the time of the accident exceed thirty feet in height? It seemed to him that that must be a question of fact in each case, provided there was evidence to support the finding. He could quite conceive a building which, when measured to its base before the footings were filled in to a particular point, might, in some conditions of fact, be considered as exceeding thirty feet in height, and in other conditions of fact might not." After adopting the theory of LORD MACNAGHTEN set out above, he continued: "It was obvious that a building might be a building of importance, though the greater part were below the level of the ground or street. Therefore the fact that part of a building was below the level of the ground did not prevent it from being over thirty feet in height."

SCOTCH CASE.—In Scotland it has been definitely decided that parts of a building below ground (in the case in question a culvert containing steam and water pipes) may be taken into account (*Halstead* v. *Alexander, Thompson & Sons*, (1901) 38 S. L. R. 473). The question whether the foundations may be taken into account was raised, but reserved.

"**Constructed or Repaired.**"—It has been decided by the House of Lords that a broad interpretation must be given to these words. It was originally held by the Court of Appeal that they were to be strictly

* Some light could be thrown on the question if there was any agreement as to the reason of the thirty-feet limit. If the reason suggested above by CHITTY, L.J., is the right one, the test would seem to be in each case—how far can a man fall? If the reason suggested by LORD MACNAGHTEN, and adopted by COLLINS, M.R., is the right one, viz. that the object is to include large builders and exclude small ones, then there seems no reason why the foundation should not in every case be reckoned as part of the height. One difficulty in the way of this view is that, in order to estimate the proper height of the building, it would in many cases be necessary to excavate to its foundations. Another difficulty is that, if this is the true theory, there seems no reason why the moment of the accident should be the only time to be regarded. The line is in any case an arbitrary one, and up to the present the Court of Appeal has declined to lay down any general principles governing its application.

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construed. It was pointed out that they were not "constructed, altered, or repaired," but "constructed or repaired," and attention was drawn to the difference between these words and those used in the definition of "engineering work." It was accordingly held that alteration was not construction, and that additions to a building were not "repair." The word "construction" was referred to original construction only, and both words were supposed to be confined to operations upon the building "as a whole." The construction of a house was held to include the plastering of the ceilings. It was left in doubt whether construction included painting, but it was definitely decided that re-painting was not repair. All this has been now set aside by the decision of the House of Lords in *Hoddinott* v. *Newton, Chambers & Co.*, [1901] A. C. 49; 70 L. J. K. B. 150. See the judgment of LORD MACNAGHTEN: "I do not think that 'construction' can be limited to the original construction . . . nor do I think that 'construction' and 'repair' can be limited to the construction and repair of a building as a whole. . . . It seems to me that whenever new material is put into a building so that it becomes an integral part of the structure, you have something in the nature of construction. . . . *Construction, repair, demolition—these three operations cover, I think, every varying phase in the life of a building from its beginning to its end.*" It was accordingly decided that a man fitting into a recently erected building some additional iron stays and girders, with a view to strengthening the structure, was engaged upon a work of construction. This decision was further explained by the Court of Appeal in *Dredge* v. *Conway, Jones & Co.*, [1901] 2 K. B. 42; 70 L. J. K. B. 494, and it was there definitely laid down that "repair" included both painting and white-washing, and that the case of *Wood* v. *Walsh & Sons*, [1899] 1 Q. B. 1009; 68 L. J. Q. B. 492 (which was in conflict with this), is to be treated as overruled. Note, however, dictum of SMITH, M.R.: "I should not be disposed to consider that the doing of ornamental work was repairing within the meaning of the Act." In view of the wide expressions of LORD MACNAGHTEN cited above, this dictum is of very doubtful authority.

Meaning of "constructed or repaired."

A building which has been constructed by means of scaffolding is still in course of construction until the scaffolding has been removed, and the removal of the scaffolding is a part of the work of construction. (*Frid* v. *Fenton*, (1900) 69 L. J. Q. B. 436.)

"**Scaffolding.**"—The Act contains no definition of "scaffolding," but the meaning of the word has been very fully considered by the House of Lords in *Hoddinott* v. *Newton, Chambers & Co.*, [1901] A. C. 49; 70 L. J. K. B. 150. Whether or not a particular erection constitutes a "scaffolding" is not, as was originally laid down by the Court of Appeal, a question of fact for the arbitrator,* on which his finding is final. "It

* Acting on this view the Court of Appeal had held in one case that loose planks resting on trestles in a room inside a house were capable of being considered a scaffolding, and had upheld a decision of an arbitrator to that effect (*Maude* v.

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Sect. 7, Sub-sec. 1 (*contd.*).

is a mixed question of fact and law. When the facts are ascertained, it is a question of law on which the Court of Appeal is entitled, and, I think, bound to express an opinion" (*per* LORD MACNAGHTEN, on p. 56). See also similar observations by LORD BRAMPTON, on p. 68. The cases of *Wood* v. *Walsh*, [1899] 1 Q. B. 1009; 68 L. J. Q. B. 492; *Maude* v. *Brooke*, [1900] 1 Q. B. 575; 69 L. J. Q. B. 322; *Ferguson* v. *Green*, [1901] 1 K. B. 25; 70 L. J. K. B. 21, in so far as they conflict with this decision, are to be considered overruled.

Meaning of "scaffolding."

"There is nothing in the Act which requires the scaffolding to be of any particular description or dimensions or to be in any particular place, or of any particular height" (*per* LORD LINDLEY in *Hoddinott* v. *Newton, Chambers & Co.*, [1901] A. C. on p. 77). "The Act applies to internal as well as to external scaffolding" (*per* LORD BRAMPTON, on p. 68). Accordingly in that case an internal staging arranged with planks and trestles and without poles for the purpose of inserting additional girders in the roof of a building was held to be scaffolding.

The following dicta are worth notice:—"In construing the Act we are not at liberty to confine the meaning of the word 'scaffolding' to that which is its most usual form; anything, whether usual or unusual, that can properly be called 'scaffolding' is within the Act" (*per* RIGBY, L.J., in *Maude* v. *Brook*, *supra*, approved by LORD BRAMPTON in *Hoddinott* v. *Newton, Chambers & Co.*, [1901] A. C. on p. 69; and followed by COLLINS, M.R., in *Veazey* v. *Chattle*, (1901) 18 T. L. R. 99). A thing may well be a scaffolding though no poles or trestles are used," *e.g.* planks laid across two walls (*per* RIGBY, L.J., in *Maude* v. *Brooke*, *supra*, approved by LORD BRAMPTON in *Hoddinott* v. *Newton, Chambers & Co.*, [1901] A. C. on p. 69). "Planks lashed to iron pillars to form a platform for workmen would be a scaffolding" (*per* LORD BRAMPTON, *ibid.*). Whether an arrangement of planks suspended from a ceiling for the same purpose would be a scaffolding remains to be decided (*ibid.*, on p. 70). "A ladder may be 'scaffolding'" (*per* COLLINS, M.R., in *Veazey* v. *Chattle*, (1901) 18 T. L. R. 99).

In *Dredge* v. *Conway, Jones & Co.*, [1901] 2 K. B. 42; 70 L. J. K. B. 494, the following arrangement was held to be a scaffolding. (The facts are taken from the *Times Law Reports*.) "On the top landing two short ladders were placed against the opposite walls and a plank placed between them with its ends resting on rungs of the ladders. On the lower landing was placed a longer ladder reaching up to the top landing, and a plank was placed with one end resting on one of the rungs of this ladder and the other upon the other plank between the first two ladders."

In *Veazey* v. *Chattle*, (1901) 18 T. L. R. 99, the roof of a house

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Brooke, [1900] 1 Q. B. 575; 69 L. J. Q. B. 322); while on the other hand, in another case (*Ferguson* v. *Green*, [1901] 1 K. B. 25; 70 L. J. K. B. 21), where an arbitrator found that a precisely similar erection was not a scaffolding, they declined to disturb his decision.

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Sect. 7, Sub-sec. 1 (*contd.*).

was being repaired by means of a ladder and a "crawling-board." The latter consisted of a plank about twenty feet in length and ten inches in width, across which were nailed or screwed ridges of wood for the purpose of giving a foothold to any one working on it. At the top end on the lower side was another ridge by which the board was hooked on the ridge of the roof. In attempting to fix this board in position a man fell and was injured. *Held*, that the arrangement was a scaffolding. *Per* COLLINS, M.R.: "It was a platform which was used by a workman to enable him to get on with his work. It was a special contrivance, such as was usually adopted for the purpose of allowing a workman to work safely in a position at a considerable height above the level of the ground, and it afforded a means of supporting him for doing his work in the same way as the trestles and boards which had been held to be scaffolding in the cases cited." * (This case was not reported in the *Law Reports* or *Law Journal* up to February, 1902.)

Injured man need not be working on scaffolding.

It should be noted that, in order to come within the Act, it is not necessary that the injured workman should *himself* be working on the scaffolding. All workmen employed by the "undertaker" on, in, or about the building are within the Act. Thus, in *Maude* v. *Brooke* (*supra*) a workman engaged in plastering the landing of an unfinished house, over thirty feet high, fell over the staircase, and was injured. At the moment of the accident some other workmen were plastering the ceiling of an adjoining room by the help of some loose planks resting on trestles. This being a scaffolding, and the injured workman being thus employed in a building over thirty feet high, which was being constructed by means of a scaffolding, he was held to be within the Act.

Scaffolding need not be actually erected.

Nor apparently is it necessary that the scaffolding should be actually in use or even actually standing at the moment of the accident. The principle seems to be that the whole contract must be looked at to see whether the operation contracted for involves the use of scaffolding. The condition is nothing more than "a rough test of the importance of the work," *per* RIGBY, L.J., in *Maude* v. *Brooke* (*supra*). The point has been expressly decided in Scotland in this sense. In *Halstead* v. *Alexander, Thomson & Sons*, (1901) 38 S. L. R. 473, the scaffolding (certain trestles and planks) was used from time to time in the course of the building operations going on both before and after the accident, but

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* In view of the above cases, *Wood* v. *Walsh*, [1899] 1 Q. B. 1009; 69 L. J. Q. B. 492 (though mentioned with apparent approval on this point by LORD BRAMPTON in *Hoddinott* v. *Newton, Chambers & Co.*, [1901] A. C. on p. 71), must be considered altogether overruled. The Scotch case of *McDonald* v. *Hobbs & Samuel*, (1899) 2 F. 3; 37 S. L. R. 4, will apparently follow the same course.

In *Maude* v. *Brooke*, [1900] 1 Q. B. 575; 69 L. J. Q. B. 322, the arbitrator decided that planks resting on trestles were a scaffolding, and his decision was upheld on the ground that this was a question of fact for him. From the above cases it is clear that it would now be held that the arbitrator was right as a matter of law.

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Sect. 7, Sub-sec. 1 (*contd.*).

on the day of the accident was not being used and was not even erected. *Held*, that the building was being constructed by means of a scaffolding. A *dictum* of SMITH, M.R., in *Dredge* v. *Conway, Jones & Co.*, [1901] 2 K. B. on p. 44; 17 T. L. R. 355, though under the circumstances *obiter*, is worth notice in this connection. "It is found as a fact by the County Court Judge that so far as regards what would be admitted on both sides to be structural repair work had not been commenced at the time of the accident. I do not think that fact makes any difference, for all the work to be done on the building was part of one contract."

"**Machinery.**"—There is no definition of "machinery" in the Act, and, like "wharf," "dock," "quay," etc., the word is presumably to be understood in its popular sense. (See *Haddock* v. *Humphrey*, [1900] 1 Q. B. 609; 69 L. J. Q. B. 327.)

What powers included.

"**Or Other Mechanical Power.**"—These words are an example of the doctrine of *ejusdem generis* in its simplest form, and must be restricted to mechanical power of the same kind as steam or water. Machinery driven by gas or electricity is within the definition, while machinery driven by leverage applied by human or animal exertion is not within it. For a note on the doctrine of *ejusdem generis*, see footnote on p. 57.

These remarks, which appeared in the last edition of this work, have now been expressly confirmed by the cases of *Wrigley* v. *Bagley & Wright*, [1901] 1 K. B. 780; and *Wilmott* v. *Paton*, (1902) 71 L. J. K. B. 1. See particularly the judgment of STIRLING, L.J., in the latter case, at p. 3.

*(2.) In this Act—

36 & 37 Vict. c. 48.

59 & 60 Vict. c. 48.

"Railway" means the railway of any railway company to which the Regulation of Railways Act, 1873, applies, and includes a light railway made under the Light Railways Act, 1896; and "railway" and "railway company" have the same meaning as in the said Acts of 1873 and 1896.

The Regulation of Railways Act, 1873.—S. 3. The term "railway" includes every station, siding, wharf, or dock of or belonging to such railway, and used for the purposes of public traffic.

The term "railway company" includes any person being the owner or lessee of or working any railway in the United Kingdom constructed or carried on under the powers of any Act of Parliament.

What railways within Act.

The Light Railways Act, 1896.—S. 28. The expression "light railway company" includes any person or body of persons, whether incorporated or not, who are authorized to construct, or are owners or lessees of any

* For convenience this long sub-section has been divided into separate paragraphs, each being followed by its appropriate notes.

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light railway, authorized by this Act, or who are working the same under any working agreement.

Sect. 7, Sub-sec. 2 (*contd.*).

The above very partial definitions are the only ones to be found in the Acts referred to. The meaning of "railway" and "railway company" must be collected from these definitions and the general scope of the Acts.

A dock company, having under a private Act of Parliament lines of railway in connection with the dock used for the purpose of through traffic in connection with railway companies, is not necessarily a railway company, and the lines are not a railway within the words of the above definition. *London and India Docks Co.* v. *Midland Ry. Co. and G. E. Ry. Co.*, (1902) 18 T. L. R. 324.

Private railways not within Act.

Private railways belonging to the owners of works or collieries, and not used for the purposes of public traffic, are not railways within the above definition. (*Turnbull* v. *The Lambton Collieries, Ltd.*, (1900) 16 T. L. R. 379.)

SCOTCH CASE.—A similar decision was given in the Scotch Court of Session in *Brodie* v. *N. B. Ry. Co.*, (1900) 38 S. L. R. 38. A man in the employment of the railway company was injured at a considerable distance from the premises of the railway company on a siding belonging to a private trading company, and used entirely for the traffic of the latter. *Held*, that the siding was not a "siding belonging to the railway company" within the meaning of the above definition.

The word "railway" though, under s. 3 of the Act of 1873, it includes "station," only includes such parts of it as are "used for the purposes of public traffic," and does not, therefore, include a refreshment room. Persons employed in railway-station refreshment rooms are consequently not within the Act. (*Milner* v. *The Great Northern Railway Co.*, [1900] 1 Q. B. 795; 69 L. J. Q. B. 427.) See note on p. 34.

In *Caledonian Railway Co.* v. *Breslin*, (1900) 37 S. L. R. 873, a man in the employ of a railway company was injured while shoeing a horse in a smithy attached to a station. The horses shod in the smithy were used in connection with the public traffic carried on by the railway company. *Held*, that he was employed "about a railway." *Per* the LORD PRESIDENT: "He was fitting a part of the railway plant for the purpose of conducting the traffic, as much as an engine-fitter or an engine-cleaner preparing an engine to haul a train."

58 & 59 Vict. c. 37.

"Factory" has the same meaning as in the Factory and Workshop Acts, 1878 to 1891, and also includes any dock, wharf, quay, warehouse, machinery, or plant, to which any provision of the Factory Acts is applied by the Factory and Workshop Act, 1895, and every laundry worked by steam, water, or other mechanical power:

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Sect. 7, Sub-sec. 2 (*contd.*).

Definition of "Factory" altered by Factory Act, 1901.

Effect of Factory and Workshop Act, 1901, on this Definition.—This definition must now be remodelled before its proper effect can be appreciated. All the existing Factory and Workshop Acts have been repealed and re-enacted with modifications by the Factory and Workshop Act, 1901, which came into operation on January 1st, 1902. Now, by the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 38, sub-s. 1, it is provided—

Where this Act or any other Act passed after the commencement of this Act repeals and re-enacts with or without modifications any provisions of a former Act, references in any other Act to the provisions so repealed, shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted.

In the above definition there are three "references . . . to provisions so repealed," viz.—

1. "The Factory and Workshop Acts, 1878 to 1891."
2. "The Factory Acts" (*i.e.* The Factory and Workshop Acts, 1878 to 1895).
3. "The Factory and Workshop Act, 1895."

These references must accordingly be construed as references to *the corresponding provisions* of the Act of 1901. The definition will then read—

Factory has the same meaning as in THE PROVISIONS OF THE FACTORY ACT, 1901, WHICH CORRESPOND TO THOSE OF THE FACTORY AND WORKSHOP ACTS, 1878 TO 1891, and also includes any dock, wharf, quay, warehouse, machinery, or plant to which any provision of THE FACTORY AND WORKSHOP ACT, 1901, is applied by ANY OF THE PROVISIONS OF THE FACTORY AND WORKSHOP ACT, 1901, WHICH CORRESPOND TO THOSE OF THE FACTORY AND WORKSHOP ACT, 1895, and every laundry worked by steam, water, or other mechanical power.

This is, no doubt, a very cumbrous form of words. For practical purposes it may be simplified as follows: The only section of the Act of 1901 which specifically defines "Factory," is s. 149. To this, perhaps, should be added s. 90, which contains a definition of "cotton cloth factory." The section of the Act of 1895, which applied provisions of that Act to docks, wharves, machinery, and plant, was s. 23. This has now been re-enacted in a modified and enlarged form by ss. 104, 105, 106 of the Act of 1901. For practical purposes the definition may therefore be reconstructed as follows:—

FACTORY HAS THE SAME MEANING AS IN SS. 149 AND 90 OF THE FACTORY AND WORKSHOP ACT, 1901, AND ALSO INCLUDES ANY DOCK, WHARF, QUAY, MACHINERY, OR PLANT TO WHICH ANY PROVISION OF THAT ACT IS APPLIED BY SS. 104, 105, 106.*

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* It is submitted that this correctly represents the effect of the definition. It is not correct to construe it as though it ran, "has the same meaning as in the Factory and Workshop Act of 1901, and includes any dock, etc., to which *any provision* of that Act is applied." It is also submitted that the only sections of

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Sec. 7, Sub-sec. 2 (*contd.*).

Factories which are within Act.

Classification of Factories under above Definition.—This is the most complicated portion of the Act. It has been described by one learned Lord Justice as "a veritable Chinese puzzle." It has now been made one degree more complicated by the passing of the Act of 1901.

All the material portions of the definition section of that Act, the schedules there referred to, and the other sections to which it is necessary to refer for the proper elucidation of this definition, will be found set out in Appendix C. of this work. It is believed that the following will be found to be an accurate analysis of the effect of the definition.

The following places *and things* are "factories":—

I. Factories proper.*

II. Every dock, wharf, quay, and warehouse.

III. Machinery or plant used in loading or unloading or coaling any ship in any dock, harbour, or canal.

IV. Machinery or plant on any premises on which machinery worked by steam, water, or other mechanical power is temporarily used for the purpose of the construction of a building or any structural work in connection with a building.

V. Machinery or plant on any private line or siding used in connection with any factory, workshop, dock, wharf, quay, or warehouse, or any of the machinery or plant above mentioned.

VI. Every laundry worked by steam, water, or other mechanical power.

I. Factories Proper.

Analysis of "factories proper."

A. *Places, which are factories, whether or not steam, water, or other*

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the Act which are intended to be referred to as applying provisions of the Act to things not properly factories are those corresponding to s. 23 of the Act of 1895, *i.e.* ss. 104, 105, 106. The definition (it is submitted) does not mean that any machinery or plant to which any provision of the Act of 1901 applies is a factory. If that were so, every machine (and, for that matter, all plant) in every factory and workshop (not being a man's workshop) would be a factory, for s. 17 of the Act of 1901 applies to all machinery and plant in every factory and every such workshop. The reference is, in fact, a specific reference to certain definite provisions, easily recognizable and standing by themselves, which bring certain things, *not properly factories*, within the scope of the Act, and treat them for that purpose as being factories.

* Attention must be drawn to s. 149, sub-s. 4, of the Factory and Workshop Act, 1901, which is as follows:—

Where a place situate within the close, curtilage, or precincts forming a factory or workshop is solely used for some purpose other than the manufacturing process or handicraft carried on in the factory or workshop, that place shall not be deemed to form part of the factory or workshop for the purposes of this Act, but shall, if otherwise it would be a factory or workshop, be deemed to be a separate factory or workshop, and be regulated accordingly.

The effect of this seems to be that persons employed in parts of a factory where no manufacturing process is carried on (*e.g.* the office, the stables, the kitchen) are not within the Compensation Act. This is strictly in accordance with the principle of *Milner* v. *G. N. Ry. Co.*, [1900] 1 Q. B. 795; 69 L. J. Q. B. 427, which decided that persons employed in railway refreshment rooms were not to be regarded as being employed on, in, or about the railway station (see p. 43). In the face of this decision it seems doubtful whether it could be successfully contended that such persons as those above mentioned are employed even "about" the factory. The point is important, and should not be lost sight of.

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Sect. 7, Sub-sec. 2 (*contd.*).

mechanical power is used in aid of the manufacturing process there carried on. (See Factory and Workshop Act, 1901 (1 Edw. VII. c. 22) s. 149, sched. vi.)

(i.) Print works, bleaching and dyeing works, flax scutch mills, fustian cutting works, cotton cloth factories (see s. 90).

(ii.) Lucifer-match works, percussion cap works, cartridge works.

(iii.) Paper mills, paper staining works, letterpress printing works, bookbinding works.

(iv.) Blast furnaces, copper mills, iron mills, foundries (note definition in schedule), electrical stations.

(v.) Glass works, earthenware works.

(vi.) Tobacco factories.

B. *Places which are factories, provided steam, water, or other mechanical power is used in aid of the manufacturing process there carried on.*

(i.) Places (not being any of the places above enumerated) for the treatment or manufacture of cotton, wool, hair, silk, flax, hemp, jute, tow, china grass, cocoanut fibre, or other like material.

(ii.) Hat works, rope works, bakehouses, lace warehouses, shipbuilding yards (see note on s. 7, sub-s. 3, p. 70), quarries, pit-banks (note definition in schedule), metal works, india-rubber works, dry cleaning, carpet-beating, and bottle-washing works.

(iii.) Generally any places where manual labour is exercised by way of trade or for purposes of gain for the manufacture, alteration, repair, ornamentation, finishing, or adaptation for sale *of any article whatever.*

The above analysis is only a summary. In considering the following cases the exact phraseology of the Factory and Workshop Act, 1901, should of course be consulted.

"**In aid of the Manufacturing Process**" (Factory and Workshop Act, 1901, s. 149, sub-s. 1 (*b*) and (*c*)).

In *Law* v. *Graham*, [1901] 2 K. B. 327, premises were used for the purpose of bottling beer. Before the bottles were filled they were washed by machinery driven by a gas-engine. *Held*, that the machinery was not used "in aid of" the process of bottling the beer, and that consequently the premises were not a factory. Since this decision "bottle-washing works" have been constituted factories by express enactment, but the reasoning of the judgment applies to analogous cases.

Scotch Case.—In *Weir* v. *Petrie*, (1900) 37 S. L. R. 795, a workman employed in a stone-dressing yard was injured while sharpening his tools at a grindstone in the yard driven by a gas-engine. *Held*, that the grindstone was machinery used in aid of the manufacturing process carried on at the yard, and constituted the yard a factory.

Meaning of "for purposes of gain."

"**For purposes of Gain**" (Factory and Workshop Act, 1901, s. 149, sub-s. 1 (*c*).—"Gain" here means "direct gain." In *Nash* v. *Hollingshead*, [1901] 1 K. B. 700; 70 L. J. K. B. 571, a farmer used on his farm a movable steam-engine for (amongst other things) grinding meal for his

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stock. *Held*, that the use of the engine on the farm for this purpose did not make the farm a "factory."

Sect. 7, Sub-sec. 2 (*contd.*).

Per SMITH, L.J.: "I think that the gain intended by the section is a direct gain, and that the legislature in using the words 'for the purposes of gain' contemplated the manufacturing of some article for the purpose of direct gain, and not of such an indirect gain as that suggested, namely, the possible fattening of a bullock." COLLINS, L.J., based his judgment on the broader ground that a farm was obviously outside the scope of the Factory Acts. See Addenda.

SCOTCH CASE.—In *Henderson* v. *Corporation of City of Glasgow*, (1900) 37 S. L. R. 857, a dust-destructor was carried on by the respondents for the disposal of the town refuse. The bye-products were sold, but no actual profit was in fact realized. *Held*, that the dust-destructor was a place wherein manual labour was exercised *for purposes of gain* in the *adaptation for sale* of the town refuse, and was consequently a factory.

Steam, Water, or other Mechanical Power."—See note on s. 7, sub.-s. 1, p. 42.

II. EVERY DOCK, WHARF, QUAY, AND WAREHOUSE.

What "docks," etc., within Act.

The simplest and, it is submitted, the soundest way of regarding the very ill-conceived words of the definition is that *all* docks, wharves, quays, and warehouses are factories. "Factory . . . includes any dock, etc., to which any provision" of the Factory and Workshop Act, 1901, "is applied" by certain provisions of that Act. The section of the Act of 1901 which applies certain provisions of that Act to docks, wharves, quays, and warehouses is s. 104, which is set out below on p. 50, as well as in Appendix C., p. 180. Those provisions are thereby "applied" to *every* dock, wharf, quay, and warehouse, and it is submitted that consequently *every* dock, wharf, quay, and warehouse is a factory within the meaning of the above definition.

Case of Hall v. *Snowden, Hubbard & Co. considered.*

In making this submission the authors are perfectly aware that it is in direct conflict with the case of *Hall* v. *Snowden, Hubbard & Co.* (No. 2), [1899] 2 Q. B. 136; 68 L. J. Q. B. 645, which seems to have laid down that not every dock, etc., is a factory, but only those docks, etc., to which any of the enumerated provisions can be shown to have actually been applied in practice. The reasoning of this decision is very difficult to understand; the Scotch Courts have expressly declined to follow it (see *Bruce* v. *Henry & Co.*, (1900) 37 S. L. R. 511 (*per* the LORD PRESIDENT); *Strain* v. *Sloan & Co.*, (1901) 38 S. L. R. 475), and in England it is in practice habitually ignored. The Court of Appeal has decided a great many cases on these words without any reference to the principle of *Hall* v. *Snowden, Hubbard & Co.*, and if the point were taken before them again, they would probably find some means of showing that the decision had reference only to the facts of the particular case.*

* In *Raine* v. *Jobson*, [1901] A. C. on p. 410, LORD HALSBURY described an admission by counsel for the appellants that *every* dock was a factory as "a

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Sect. 7, Sub-sec. 2 (*contd.*).

"Dock" includes land and water parts.

"**Dock.**"—It has now been settled that the word "dock" here includes the dock premises, land and water, and everything they contain; and this whether the dock is a wet dock where vessels lie afloat, or a dry dock where they are laid up for repairs. Men working on board ships in a dock, loading them from lighters on the surface of the dock, navigating them across the surface of the dock, constructing, repairing, or painting them in a dock, wet or dry (or on pontoons alongside a dock), are engaged in employment "on, in, or about" a dock, quite as much as men employed upon the quays or other land part of the dock. See *Raine* v. *Jobson & Co.*, [1901] A. C. 404; 70 L. J. K. B. 771. This important case overrules *Flowers* v. *Chambers*, [1899] 2 Q. B. 142; 68 L. J. Q. B. 648, and all the cases corollary thereto. The effect of it has been very succinctly expressed as follows: A man does not get out of a dock by getting into a ship inside a dock.*

The question most commonly arises in connection with the definition of "occupier" below. See p. 60, and the cases there cited. For other examples of men held to have been employed on, in, or about docks, see *Merrill* v. *Wilson*, [1901] 1 K. B. 35; 70 L. J. K. B. 97; *Hainsborough* v. *Ralli Bros.*, (1901) 18 T. L. R. 21; *Bartell* v. *Gray & Co.*, [1902] 1 K. B. 225; 71 L. J. K. B. 115; *Cattermole* v. *Atlantic Transport Co.*, [1902] 1 K. B. 204; 71 L. J. K. B. 173.

Seamen within Act when in "dock."

There is no implied intention to exclude seamen from the benefit of the Act. The origin of this figment seems to lie in the fact that by the combined effect of s. 8 of the Employers' Liability Act, s. 13 of the Employers' and Workmen Act, 1875, and s. 11 of the Merchant Seamen Act, 1880, seamen are expressly excluded from the Employers' Liability Act, while they are not expressly included in this Act. This Act, however, does not classify workmen according to the nature of their employment, but according to the places where they are employed, and if a seaman at the time of an accident is employed "on, in, or about" a dock, he is just as much entitled to the benefit of the Act as any one else. See the observations of LORD HALSBURY, L.C., in *Raine* v. *Jobson & Co.* (*supra*). The Irish decisions, which lay down that seamen are impliedly excluded, may be ignored.

Meaning of wharf, etc.

"**Wharf.**"—The word is here used in its popular and ordinary sense. In *Haddock* v. *Humphrey*, [1900] 1 Q. B. 609; 69 L. J. Q. B. 327, it was held that a piece of land used for the storage of timber, cut off from the dock at which the timber was landed by a space of land 150 yards wide, a line of offices, and a fence with gates in it, was not a "wharf" within the meaning of the Act. See the judgment of COLLINS, L.J., as reported in the Law Journal Reports: "I think that the only safe standard to apply in interpreting this section of the Act is to give

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very frank and proper admission." For a full discussion of the case of *Hall* v. *Snowden, Hubbard & Co.*, see Introduction.

* For a full discussion of *Raine* v. *Jobson*, and its effect on previous cases, see Introduction.

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to the words 'dock,' 'wharf,' and 'quay' their ordinary popular sense. Any attempts to put refined meanings upon these words would, I think, be fraught with difficulties, which we should feel in deciding future cases. We have already, in previous cases, put the popular meaning upon the word 'dock' in the Act, and in my judgment the only safe course is to put a popular meaning on the word 'wharf.' . . . In popular language a wharf is a place contiguous to water used for the purpose of loading and unloading goods, over which goods pass in loading and unloading. . . . I think it is essential to a wharf that goods should be in transit over it. The primary idea is, that it is a place used, *not for storing goods*, but *in the process of their transit* to or from water."

The word "wharf" is sometimes, in modern use, applied by analogy to places alongside railways, but in view of the above decision such places would probably be held not to be "wharves" within the meaning of the Act. See *per* SMITH, L.J., in above case: "I have a strong opinion that 'wharf' must have something to do with water."

A "wharf" need not be in actual physical connection with the land. In *Ellis* v. *Cory & Sons*, [1902] 1 K. B. 38; 71 L. J. K. B. 72, a man was injured upon a floating structure moored in the middle of the Thames, and used for the unloading of coal cargoes. It was fitted with hydraulic cranes, by means of which the coal was lifted out of the hold and transferred to a hopper, where it was weighed, and thence again transferred to the other side of the structure and thrown by a shoot into a barge. *Held*, that the structure was a wharf.

"**Quay.**"—Every dock of course contains quays, and a man employed about a dock quay is employed about the dock. The object therefore of the addition of the word "quay" seems to be to include cases where men are injured on quays belonging to rivers, harbours, estuaries, etc.

"**Warehouse.**"—No definition of this word is given in the Act, and following the principle laid down above in the case of the word "wharf," it is presumably to be understood in its ordinary and popular sense.

The word is not to be restricted, on the *ejusdem generis* principle (see note on p. 57), to warehouses contiguous to water. *Wilmott* v. *Paton*, (1902) 71 L. J. K. B. 1.

The question arises whether a warehouse must be roofed in. In ordinary parlance a mere open yard in which goods are stored would certainly not be called a ware*house*. See *per* COLLINS, L.J., in *Haddock* v. *Humphrey*, [1900] 1 Q. B. 609; 69 L. J. Q. B. 327 (referring to the timber yard which it was contended in that case was a "wharf"): "*If it were roofed in*, it would no doubt be a warehouse." The question was discussed in *Wilmott* v. *Paton*, but the point does not appear to have been expressly decided.

III. MACHINERY OR PLANT USED IN LOADING OR UNLOADING OR COALING ANY SHIP IN ANY DOCK, HARBOUR, OR CANAL.

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Sect. 7, Sub-sec 2 (*contd.*).

Effect of Factory Act, 1901.

These words are taken from s. 104 of the Factory and Workshop Act, 1901, set out below,* and also in Appendix C., on p. 180.

It should be carefully noted that this is an amended form of words, and differs materially from that used in the Factory and Workshop Act, 1895, to which previous decisions on this definition had reference. Questions arose on the words employed in the Act of 1895 which can now no longer arise. It may now be taken as beyond doubt that machinery used in "loading or unloading or coaling, etc.," is within the Act whether it is on shore (as in *Woodham* v. *The Atlantic Transport Co.*, [1899] 1 Q. B. 15; 68 L. J. Q. B. 17; and *Lawson* v. *The Atlantic Transport Co.*, (1900) 16 T. L. R. 181), on the ship itself (as in *Stuart* v. *Nixon & Bruce*, [1901] A. C. 79; 70 L. J. K. B. 170), or on a lighter afloat on the surface of the dock (as in *Hennessy* v. *McCabe*, [1899] 1 Q. B. 491; 69 L. J. Q. B. 173).†

It is important to note that by the new form of words "coaling" has been added to loading or unloading. Under the old form of words it might have been doubted whether filling a ship's bunkers was an employment within the Act. The addition of the word "coaling" has now placed the matter beyond question.

"Finishing off" is part of operation of loading.

A man, who is engaged after the actual loading or unloading has ceased in "finishing off," the operation for which the machinery was required, is to be regarded as still being employed about "machinery used in the process of loading, unloading, or coaling, etc." This is the

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* **104.**—(1.) The provisions of this Act with respect to—

Application of certain provisions to docks.

(i.) Power to make orders as to dangerous machines (section seventeen);
(ii.) Accidents;
(iii.) Regulations for dangerous trades;
(iv.) Powers of inspectors (section one hundred and nineteen); and
(v.) Fines in case of death or injury (section one hundred and thirty-six),

shall have effect as if every dock, wharf, quay, and warehouse, and all machinery or plant used in the process of loading or unloading or coaling any ship in any dock, harbour, or canal were included in the word "factory," and the purpose for which the machinery or plant is used were a manufacturing process; and as if the person who by himself, his agents, or workmen, uses any such machinery or plan for the before-mentioned purpose were the occupier of the premises; and for the purpose of the enforcement of those provisions the person having the actual use or occupation of a dock, wharf, quay, or warehouse, or of any premises within the same or forming part thereof, and the person so using any such machinery or plant shall be deemed to be the occupier of a factory.

57 & 58 Vict. c. 60.

(2.) For the purposes of this section the expression "plant" includes any gangway or ladder used by any person employed to load or unload or coal a ship, and the expressions "ship" and "harbour" have the same meaning as in the Merchant Shipping Act, 1894.

† It is no longer necessary to discuss whether *Hennessy* v. *McCabe* and the Scotch cases of *The Aberdeen S. Trawling & Fishing Co.* v. *Peters*, (1899) 1 F. 786; 36 S. L. R. 573; *Healy* v. *McGregor & Ferguson*, (1900) 2 F. 634; 37 S. L. R. 454; and *Laing* v. *Young & Leslie*, (1900) 3 F. 31; 38 S. L. R. 29, were rightly decided. They were decisions upon a form of words which, by the combined operation of the Factory and Workshop Act, 1901, and the Interpretation Act, 1889, have been now superseded. They do not apply to the words now operative, and are consequently only of historical interest. The case of *Carrington* v. *Bannister*, [1901] 1 K. B. 20; 70 L. J. K. B. 31, also belongs to the same category.

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principle of *Stuart* v. *Nixon & Bruce*, [1901] A. C. 79; 70 L. J. K. B. 170, which was a decision upon the old form of words, but which applies with equal force to the new. In that case a ship had been loaded by means of certain machinery. The loading had ceased, but the machinery was being used to "finish off" the job by putting two iron cross-beams across the hatchway. While engaged in this operation a man became entangled in the machinery and was killed. *Held*, that he was employed "about machinery used in the process of loading, etc." *Per* LORD HALSBURY, L.C.: "The loading or unloading must be treated as a whole transaction, as men in business in ordinary life would regard it."

Sect. 7, Sub-sec. 2 (*contd.*).

It should be noted that machinery for this purpose need not be "driven by steam, water, or other mechanical power."

Meaning of "plant."

"Plant."—As will be seen (p. 50 *n.*), "for the purposes of this section 'plant' includes any gangway or ladder used by any person employed to load or unload or coal a ship" (Factory and Workshop Act, 1901, s. 104, sub-s. 2). These words were no doubt introduced in view of one branch of the decision in *Merrill* v. *Wilson & Co.*, [1901] 1 K. B. 35; 70 L. J. K. B. 97. In that case a gangway used for the purpose of men going on board a ship to unload cattle therefrom into lighters was held not to be "plant used in the process of unloading." In view of the above words, the decision of *Merrill* v. *Wilson & Co.* on this point is no longer law.

A very extensive meaning was given to the word "plant," as used in the Employers' Liability Act. In *Yarmouth* v. *France*, (1887) 19 Q. B. D. 647; 57 L. J. Q. B. 7, it was held to include a horse. *Per* LINDLEY, L.J.: "'Plant,' in its ordinary sense, includes whatever apparatus is used by a business man for carrying on his business—not his stock-in-trade which he buys or makes for sale, but all goods and chattels, fixed or movable, live or dead, which he keeps for permanent employment in his business." It is submitted, however, that under this Act the word must be given a narrower meaning, and that it only includes such things as naturally come within the scope of the applied sections of the Factory Acts.

In *Medd* v. *McIver*, (1899) 15 T. L. R. 364, cargo was taken into and discharged from a ship through two large iron gangway doors in the ship's side. The workman, a ship's labourer temporarily employed on board the ship, was ordered to close these iron doors, and in doing so had his thumb taken off. *Held*, that the doors were not "plant used in the process of loading or unloading."

In *Durrie* v. *Warren & Co.*, (1899) 15 T. L. R. 365, under similar circumstances, a boy was working on a staging fastened outside the ship, and was engaged in screwing up the iron doors after the loading had been completed. *Held*, that the staging outside the ship was not "plant used in the process of loading or unloading."

In view of the decision in *Raine* v. *Jobson & Co.*, [1901] A. C. 404; 70 L. J. K. B. 771, these decisions are of course of comparatively little importance. They still go to this, however, that if a ship is being

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Sect. 7, Sub-sec. 2 (*contd.*).

loaded, unloaded, or coaled in *a harbour or canal*, the circumstances relied on by the applicants in the last two cases would not be enough of themselves to bring the employment within the Act.

Meaning of "ship."

"**Ship.**"—By s. 104, sub-s. 2, of the Factory and Workshop Act, 1901, "ship" here has "the same meaning as in the Merchant Shipping Act, 1894."

By the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 742, "ship includes every description of vessel used in navigation not propelled by oars."

The result of this referential legislation is that to entitle a man to compensation he must be working at the loading or unloading or coaling of a "ship" within the meaning of the Merchant Shipping Act, 1894. The meaning of a "ship" under that Act is, however, not determined merely by the above definition. The cases decided on the words of the definition must also be consulted. By these cases it appears that the definition does not limit the ordinary meaning of "ship"; it enlarges it. In other words, the definition is inclusive and not exclusive. Thus, a hopper barge without any means of propulsion at all is a "ship." *The Mac*, (1882) 7 P. D. 126; 51 L. J. P. 81. A fishing coble is a ship. *Ex parte Ferguson*, [1871] L. R. 6 Q. B. 280; 40 L. J. Q. B. 105. *Per* BLACKBURN, J.: "Every vessel that substantially goes to sea is a ship." A gas-float, however, is not a ship. *The Gas-Float Whitton*, No. 2, [1897] A. C. 337; 66 L. J. P. 99. See the judgment of LORD ESHER, M.R., in the Court of Appeal, [1896] P. 42; 65 L. J. P. 17, where the meaning of "ship" is exhaustively discussed.

"**Harbour.**"—By the Factory and Workshop Act, 1901, s. 104, sub-s. 2, "harbour" here has "the same meaning as in the Merchant Shipping Act, 1894."

By the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 742, "'harbour' includes harbours properly so called, whether natural or artificial, estuaries, navigable rivers, piers, jetties, and other works in or at which ships can obtain shelter or ship and unship goods or passengers."

IV. MACHINERY OR PLANT ON PREMISES ON WHICH MACHINERY WORKED BY STEAM, WATER, OR OTHER MECHANICAL POWER IS TEMPORARILY USED FOR THE PURPOSE OF THE CONSTRUCTION OF A BUILDING OR ANY STRUCTURAL WORK IN CONNECTION WITH A BUILDING.

This machinery or plant becomes a "factory" by virtue of the combined effect of the definition of "factory" in this Act (see p. 43), and the Factory and Workshop Act, 1901, s. 105, sub-s. 1, set out below.* By the definition the word "factory" includes machinery to

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Application of certain provisions to buildings.

* **105.**—(1.) The provisions of this Act with respect to—

(i.) Power to make orders as to dangerous machines (section seventeen);

(ii.) Accidents;

(iii.) Regulations for dangerous trades;

(iv.) Powers of inspectors (section one hundred and nineteen); and

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which any one of certain provisions of the Act of 1901 is applied. By s. 105 of the Act of 1901 certain provisions of that Act are applied to *premises on which the above machinery is used.*

Sect. 7, Sub-sec. 2 (*contd.*).

When machinery used on building work becomes a factory.

For the purpose of those provisions these premises thus become "factories," and machinery upon them is in exactly the same position as machinery in a factory proper. One of the applied provisions (s. 17) gives power to a Court of summary jurisdiction to make an order as to dangerous machines used in factories. By the application of s. 105 such a Court is now empowered to make such an order in the case of *any machinery* on the premises above specified. The effect of s. 105 is thus to apply a provision of the Act of 1901 to *any machinery* on those premises, and any such machinery is accordingly a factory.

This is the result of the reasoning adopted in *McNicholas* v. *Dawson*, [1899] 1 Q. B. 773; 68 L. J. Q. B. 470. In that case a steam-engine was used to work a mortar-pan, which was grinding mortar for certain building operations in progress on the premises. *Held*, that the steam-engine was itself a factory.

For another example of a machine used in building operations being treated as a factory, see *Fenn* v. *Miller*, [1900] 1 Q. B. 788; 69 L. J. Q. B. 439.

It is important to observe that to constitute machinery a factory within this provision it is not necessary that it should be driven by steam, water, or other mechanical power. Some such machinery, it is true, must be upon the premises, but provided any such machinery is there, all machinery upon the premises, whether "driven by steam, water, or other mechanical power" or not, comes within the words. Thus, in *McNicholas* v. *Dawson*, the presence of the steam-engine driving the mortar-mill brought the premises within the scope of s. 105. This once effected, a hand-winch in some other part of the premises would have been quite as much subject to s. 17 as the steam-engine, and therefore quite as much a factory.

Plant used on building work may be a "factory."

"Plant" on such premises is now on the same footing as machinery. S. 4 of the Act of 1895—the corresponding section to s. 17 of the Act of 1901—only applied to machinery. S. 17 applies to both machinery and plant. The scope of the Compensation Act is thus incidentally widened in a very important particular. Building operations often cover a very large area, and though machinery may be used upon any given premises, a man may very well be injured on the premises in such a position that

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(v.) Fines in case of death or injury (section one hundred and thirty-six), shall have effect as if any premises on which machinery worked by steam, water, or other mechanical power is temporarily used for the purpose of the construction of a building or any structural work in connection with a building were included in the word "factory," and the purpose for which the machinery is used were a manufacturing process, and as if the person who, by himself, his agents, or workmen, temporarily uses any such machinery for the before-mentioned purpose were the occupier of the said premises; and for the purpose of the enforcement of those provisions the person so using any such machinery shall be deemed to be the occupier of a factory.

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Sect. 7, Sub-sec. 2 (*contd.*).

he cannot be said to be employed "about" the machinery. He may nevertheless now secure compensation, if he can show that he was employed about some of the building plant.

V. MACHINERY OR PLANT ON ANY PRIVATE LINE OR SIDING USED IN CONNECTION WITH ANY FACTORY, WORKSHOP, DOCK, WHARF, QUAY, OR WAREHOUSE, OR THE MACHINERY OR PREMISES ABOVE MENTIONED.

The inclusion of this special class of machinery and plant is one of the unexpected results of the Factory and Workshop Act, 1901. The section which brings this about is s. 106, set out below,* and in Appendix C., pp. 180 *seq.* The process by which the result is reached follows exactly the same lines as that explained above in regard to machinery and plant used in building operations, and it is submitted with confidence that to some extent employment on private lines and sidings is now brought within the scope of the Compensation Act.

When machinery on private line or siding is a factory.

The point may perhaps be best explained by following, with slight adaptations, the judgment of ROMER, L.J., in *McNicholas v. Dawson*, [1899] 1 Q. B. 773; 68 L. J. Q. B. 470: "S. 7, sub-s. 1, applies the Act to employment on, in, or about, among other things, a factory. Looking to the definition of a factory in the same section, I find that it includes machinery [or plant] to which [any one of certain provisions of the Factory and Workshop Act, 1901, is applied]. I turn, then, to that Act, and I find that by [s. 106] certain provisions are to have effect, as if any [private line or siding used in connection with a factory or workshop or with any place to which any of the provisions of the Act are applied] were included in the word factory. . . . Thus machinery or plant or [such a line or siding] is machinery to which one at least of the provisions of the Act [of 1901], namely, the power to make orders as to dangerous machines under s. [17] is applied by s. [106] of that Act. The chain is thus complete."

The result is that if a man is injured on, in, or about machinery (*e.g.* a locomotive, a hauling engine, a crane) on a private line or siding used in connection with any of the places above enumerated, *or about any plant* (*e.g.* a line of waggons, cattle-pens, staging, etc.) used on such line or

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* **106.**—(1.) Where any line or siding not being part of a railway within the meaning of the Railway Employment (Prevention of Accidents) Act, 1900, is used in connexion with a factory or workshop, or with any place to which any of the provisions of this Act are applied, the provisions of this Act with respect to—

Application of certain provisions to railway sidings.

(i.) Power to make orders as to dangerous machines (section seventeen);

63 & 64 Vict. c. 27.

(ii.) Accidents;

(iii.) Regulations for dangerous trades;

(iv.) Powers of inspectors (section one hundred and nineteen); and

(v.) Fines in case of death or injury (section one hundred and thirty-six),

shall have effect as if the line or siding were part of the factory or workshop.

(2.) If any such line or siding is used in connexion with more than one factory or workshop belonging to different occupiers, the foregoing provisions shall have effect as if the line or siding were a separate factory.

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siding, he is within the Act—always, of course, provided his employer is the "occupier" of the line or siding.*

Sect. 7, Sub-sec. 2 (*contd.*).

If the above reasoning is sound, a person injured about machinery or plant on a private line or siding belonging to a workshop would be within the Act, while a person injured in the workshop itself would not. For the definition of workshop, see Factory and Workshop Act, 1901, s. 149, set out in Appendix C., on pp. 180 *seq.* Note, however, that by s. 157 of that Act, s. 17 (the section relating to orders as to dangerous machines) does not apply to men's workshops—that is to say, workshops conducted on the system of not employing any woman, young person, or child therein.

VI. EVERY LAUNDRY WORKED BY STEAM, WATER, OR OTHER MECHANICAL POWER.

For the meaning of the words "other mechanical power," see note on s. 7, sub-s. 1, p. 42.

"Mine" means a mine to which the Coal Mines Regulation Act, 1887, or the Metalliferous Mines Regulation Act, 1872, applies:

50 & 51 Vict. c. 58. 35 & 36 Vict. c. 77.

What mines are within Act.

"**The Coal Mines Regulation Act, 1887.**"—S. 3: "This Act shall apply to mines of coal, mines of stratified ironstone, mines of shale, and mines of fire-clay; and in this Act, unless the context otherwise requires, the word 'mine' means a mine to which this Act applies."

S. 75: "In this Act, unless the context otherwise requires,—

"'Mine' includes every shaft in the course of being sunk, and every level and inclined plane in the course of being driven, and all the shafts, levels, planes, works, tramways, and sidings, both below ground and above ground in and adjacent to and belonging to the mine."

"**The Metalliferous Mines Regulation Act, 1872.**"—S. 3: "This Act shall apply to every mine of whatever description other than a mine to which the Coal Mines Regulation Act, 1872 [*now* 1887] applies."

S. 41: "In this Act, unless the context otherwise requires,—

"The term 'mine' includes every shaft in the course of being sunk, and every level and inclined plane in the course of being driven for commencing or opening any mine, or for searching for or proving minerals, and all the shafts, levels, planes, works, machinery, tramways, and sidings, both below ground and above ground in and adjacent to a mine, and any such shaft, level, and inclined plane, adjacent to and belonging to the mine."

"**Mine.**"—As to the meaning of the word "mine," see note on MINERALS, under definition of QUARRY, *infra.*

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* A railway company, whose locomotives occasionally pass over such a siding, would presumably not be held to be the "occupiers." Note the case of *Brodie* v. *N. B. Ry. Co.*, (1900) 38 S. L. R. 38, referred to on p. 43.

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Sect. 7, Sub-sec. 2 (*contd.*).

A mine in course of construction, but not yet actually in working order, is a mine within the meaning of the above definitions. *Ellison* v. *Longden & Sons*, (1901) 18 T. L. R. 48.

What mines are within Act (contd.).

The words "adjacent to and belonging to" in the above definitions do not enlarge the meaning of "mine" so as to include places at a distance from the mine itself. In *Turnbull* v. *Lambton Collieries, Ltd.*, (1900) 16 T. L. R. 369, an accident occurred to a workman while driving a train on a private railway belonging to a colliery company at a spot three quarters of a mile from the mine itself. *Held*, that the employment was not "on, in, or about" a mine. "The words in that section (s. 75 of the Act of 1887) 'adjacent to and belonging to the mine' mean physically adjacent to, and belonging to the mine itself, and not merely belonging to the mine owner" (*per* SMITH, L.J.) Cf. *Davies* v. *The Rhymney Iron Co.*, (1900) 16 T. L. R. 329.

57 & 58 Vict. c. 42.

"Quarry" means a quarry under the Quarries Act, 1894:

What quarries are within Act.

"**The Quarries Act, 1894.**"—S. 1: "This Act shall apply to every place (not being a mine) in which persons work in getting slate, stone, coprolites, or other minerals, and any part of which is more than twenty feet deep, and every such place is in this Act referred to as a quarry under the Act."

It will be observed that by virtue of this section the Act only extends to quarries over twenty feet deep. It should be noted, however, that *any* quarry, of whatever depth, may under this Act be a *factory* if machinery driven by steam, water, or other mechanical power is used therein. (See note on definition of FACTORY, p. 45, and the Factory and Workshop Act, 1901, sched. 6, part 2 (2), Appendix C.).

Meaning of "minerals."

The meaning of the word MINERALS has been discussed in a great number of cases in connection with "reservations" in leases; see, in particular, *Hext* v. *Gill*, (1872) L. R. 7 Ch. 669; 41 L. J. Ch. 761; *Lord Provost, etc., of Glasgow* v. *Farie*, (1888) 13 A. C. 637; 58 L. J. P. C. 33; *The Earl of Jersey* v. *The Neath Union*, (1889) 22 Q. B. D. 555; 58 L. J. Q. B. 573; *Johnstone* v. *Crompton & Co.*, [1899] 2 Ch. 190; 68 L. J. Ch. 559; but these decisions do not afford a satisfactory guide in construing particular statutes (see *per* LORD HERSCHELL, in *The Midland Railway Co.* v. *Robinson*, [1890] 15 A. C. 19; 59 L. J. Ch. 442). In regard to the present statute, it is submitted further that the word "minerals" must mean minerals "*ejusdem generis*" with "slate, stone, coprolites," and secondly, that the words "mine," "quarry," "minerals," must all be interpreted in their popular sense. (See *Haddock* v. *Humphrey*, [1900] 1 Q. B. 609; 69 L. J. Q. B. 327.)

Meaning of "mine" and "quarry."

As to the popular meaning of "mine" and "quarry," see the judgment of LORD HERSCHELL in *Lord Provost, etc., of Glasgow* v. *Farie* (*supra*). "What is the interpretation to be put upon the word 'mines'?

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I think the primary idea suggested to the popular mind by the use of the word is an underground working in which minerals are being or have been wrought. It is certainly often used in contrast to 'quarry,' as indicating an underground working as opposed to one open to the surface. . . . The word 'mines' is, I think, in a secondary sense, very frequently applied to a place where minerals commonly worked underground are being wrought, though in the particular case the working is from the surface. For example, where iron is got by surface workings, they are spoken of as iron mines, and so, too, with coal which crops out at the surface. No one, I think, ever heard of a coal or iron quarry. On the other hand, the term 'slate quarry' is undoubtedly sometimes made use of, though the workings are underground."

Sect. 7, Sub-sec. 2 (*contd.*).

"Engineering work" means any work of construction or alteration or repair of a railroad, harbour, dock, canal, or sewer, and includes any other work for the construction, alteration, or repair of which machinery driven by steam, water, or other mechanical power is used:

Two classes of operations are here referred to:—

Meaning of "engineering work."

1. The construction, alteration, or repair of a railroad, harbour, dock, canal, or sewer, *whether or not* machinery driven by steam, water, or other mechanical power is used in connection therewith.

2. *Any* work of construction, alteration, or repair, *provided that* machinery driven by steam, water, or other mechanical power is used in connection therewith.

The phraseology of the definition is here slightly transposed, but this seems to be necessary for the proper expression of its meaning. On this interpretation the definition is analogous to that of "factory," adopted from the Factory Acts. "Factory" means, firstly, certain specifically enumerated works; secondly, a large number of other works, provided that machinery driven by steam, water, or other mechanical power is used in connection with the processes there carried on.*

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* There is no occasion to restrict the words "any other work" to works of the same nature as "railroads, harbours, docks, canals, or sewers." The doctrine of *ejusdem generis* (*i.e.* that where there are general words following an enumeration of specific words, the general words must be confined to things of the same kind as those specified) has here no application. It is a question of construction in each case, whether the general words are to be restricted, and the tendency of modern decisions is against their restriction, unless the context clearly requires it. (See *Anderson* v. *Anderson*, [1895] 1 Q. B. 749; 64 L. J. Q. B. 457, and the dicta of RIGBY, L.J., in *The Smelting Co. of Australia* v. *The Inland Revenue Commissioners*, [1897] 1 Q. B. 175; 66 L. J. Q. B. 137.) Where the general words follow closely on the specific words in the same clause (as immediately below in

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Sect. 7, Sub-sec. 2 (*contd.*).

Meaning of "engineering work" (contd.).

The above observations, with the accompanying footnote, appeared in the last edition of this work. They have now been expressly confirmed by the case of *Cosgrove* v. *Partington*, (1900) 17 T. L. R. 39. A man was engaged in putting a fifth story on to a mill. The work included the hoisting of iron girders by means of a steam-winch. *Held*, that the operation was an "engineering work." *Per* SMITH, M.R.: "It was argued . . . that the words 'any other work' ought to be limited to work *ejusdem generis* with what would ordinarily be called engineering work. But in his opinion those words were used for the purpose of enlarging the meaning of engineering work."

In *Chambers* v. *The Whitehaven Harbour Commissioners*, [1899] 2 Q. B. 132; 68 L. J. Q. B. 740, it was assumed, though not decided, that the dredging of a harbour by a steam-dredger was an "engineering work."

Meaning of "railroad."

"**Railroad.**"—The word "railroad" here is equivalent to "railway." It is not to be limited to the mere metal track. *Per* ROMER, L.J.: It is "used in this section in a popular sense as including everything which is a necessary part of the railway as a going concern." The erection of a signal-box by the side of a railway is consequently an "engineering work." *Fullick* v. *Evans, O'Donnell & Co.*, (1901) 17 T. L. R. 346.

SCOTCH CASES.—IN *Rae* v. *Fraser*, (1899) 1 F. 1017, an air-compressor was being lifted on to a lorry by means of hydraulic power with a view to its being removed from the work at which it was being used. *Held*, that the lifting of the air-compressor was not a work of construction, alteration, or repair, and consequently not an "engineering work" within the meaning of the definition.

In *Reid* v. *Fleming & Co.*, (1901) 38 S. L. R. 720, a hay-cutting machine, in course of construction, was being tested by machinery driven by steam. *Held*, that the testing of the machine was part of the work of its construction, and that the construction of the machine was consequently an "engineering work" within the meaning of the definition.

"**Other Mechanical Power.**"—See note on s. 7, sub-s. 1, p. 42.

"Undertakers" in the case of a railway means the railway company; in the case of a factory

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the phrase, "steam, water, or other mechanical power"), the doctrine no doubt applies. (Cf. *In re Stockport, etc., Schools*, [1898] 2 Ch. 687; 68 L. J. Ch. 41). In the present context, however, the general words and the specific words are in separate clauses. The legislature has set apart and enumerated the most considerable of the works to which the words "engineering work" might naturally apply, and has brought them within the Act in all cases; those outside this enumeration only come within the Act if they satisfy a certain condition, *i.e.* if they involve the use of machinery driven by steam, water, or other mechanical power.

The elucidation of this definition is not made more easy by the fact that the word "work" is apparently used in two senses. In the first part of the definition it seems to mean the process or operation; in the second, the subject of such process or operation.

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quarry, or laundry, means the occupier thereof * within the meaning of the Factory and Workshop Acts, 1878 to 1895; in the case of a mine means the owner thereof within the meaning of the Coal Mines Regulation Act, 1887, or the Metalliferous Mines Regulation Act, 1872, as the case may be; and in the case of an engineering work means the person undertaking the construction, alteration, or repair; and in the case of a building means the persons undertaking the construction, repair, or demolition:

Sect. 7, Sub-sec. 2 (*contd.*).

"**Occupier.**"—This is one of the most important words of the Act, and has been made the subject of numerous decisions. These may best be considered by taking *seriatim* the localities to which the word is applied, following, as regards factories, the classification given above.

Meaning of "occupier" of factory.

1. *Factories proper, quarries, and laundries.*—"Occupier," according to the above definition, means "occupier" within the meaning of the Factory and Workshop Act, 1901. There is no definition of "occupier" in the Act of 1901, but the word is freely used throughout, and the meaning must be collected from the general sense of the references. "Occupier" seems to mean the person who has the control of the premises and the work there proceeding, and employs the workpeople there engaged. The following points should be noticed in this connection:—

(i.) A person who employs workmen in a factory is not necessarily an "occupier." See s. 19, sub.-s. 5. "If any accident to which this section applies occurs to a person employed in an iron-mill or blast-furnace, or other factory or workshop where the occupier is not the actual employer of the person killed or injured, the actual employer shall immediately report the same to the occupier, and in default shall be liable to a fine not exceeding five pounds."

(ii.) If, however, the workmen which such person employs are employed in connection with machinery driven by steam, water, or other mechanical power, then such person is for the purpose deemed to be an "occupier." See s. 142. "Where in a factory the owner or hirer of a machine or implement moved by steam, water, or other mechanical power is some person other than the occupier of the factory, the owner or hirer shall, so far as respects any offence against this Act committed in relation to a person who is employed in or about or in connection with that machine or implement, and is in the employment or pay of the owner or hirer, be deemed to be the occupier of the factory."

* As explained on p. 44, these words should now be construed as though they read "within the meaning of the Factory and Workshop Act, 1901."

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Sect. 7, Sub-sec. 2 (*contd.*).

(iii.) An employer, whose workmen are on the premises of a factory merely for some temporary purpose (not within the section last cited), does not necessarily become an occupier of the factory.

In *Francis* v. *Turner*, [1900] 1 Q. B. 478; 69 L. J. Q. B. 182, an employer sent some of his men to remove some machinery from the factory of another employer. While so engaged one of the men sustained an accident. *Held*, that his employer was not the "occupier" of the factory.

In *Herron* v. *Charnley*, (1900) (the *Times* newspaper, February 19th), a man in the employment of a joiner was injured while executing joinery work in a fibre factory. *Held*, that his employer was not the occupier of the factory. (The case is inadequately reported.)

SCOTCH CASES.—In *Purves* v. *Sterne & Co.*, (1900) 37 S. L. R. 696, a firm of engineers had temporary control of a factory for the purpose of trying some machinery which they had fitted therein. An accident occurred in the course of the trial of the machinery. *Held*, that they were not the occupiers of the factory.

In *Malcolm* v. *McMillan*, (1900) 37 S. L. R. 383, a workman in the employment of an occupier of an ironfoundry was sent, in the course of his employment, to repair some pipes at a soap factory, and was killed while so engaged. *Held*, that his employers were not the occupiers of the soap factory.

The above decisions *mutatis mutandis* apply to the word "occupier" as regards quarries and laundries.

Meaning of "occupier" of dock, etc.

2. *Docks, Wharves, Quays, and Warehouses.*—A wider meaning is given to the word "occupier" in the case of docks, wharves, quays, and warehouses than in the case of ordinary factories. This arises from the words used in s. 104 of the Factory and Workshop Act, 1901, set out on p. 50, and in Appendix C., p. 180.

"For the purpose of the enforcement of those sections, the person having *the actual use or occupation* of a dock, wharf, quay, or warehouse, or of any premises within the same or forming part thereof, shall be deemed to be the occupier of a factory."

See *per* COLLINS, L.J., in *Merrill* v. *Wilson & Co.*, [1901] 1 K. B. 35; 70 L. J. K. B. 97: "The Act does not insist on more than the 'actual use' of the quay, for the collocation of those words, disjunctively with the word 'occupation,' involves that use must mean something less than legal occupation."

"Use or occupation" here is not to be interpreted to mean "exclusive use or occupation." All that is necessary is (1) that the employer should have the use and occupation of some definable area on the premises in question; (2) that he should have the practical control of that area for the purpose for which he uses it. See the judgment of COLLINS, L.J., in *Merrill* v. *Wilson & Co.*: "In order to make the respondents liable, I think there must be some definable area in respect of which, if rightly defined, they can be said to be 'undertakers' in respect of a factory. . . .

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Sect. 7, Sub-sec. 2 (*contd.*).

Meaning of "occupier" of dock, etc. (contd.).

In the case of merely a few inches of standing-room, or the space occupied by a cart on the quay, it would obviously be impossible to say that a person could use or occupy that as a factory. But if the space of quay used were the length of a ship, I do not see why it should not be capable of being considered a factory within the Act. In order to see whether a person has the 'actual use or occupation' of a subject-matter within the Act, one must, I think, necessarily consider the nature of the subject-matter of which it is alleged that he has the use or occupation, because the question whether a person has the use of that subject-matter in the sense of using it as a factory within the Act, must, I think, have reference to the essential purpose for which it exists and for which it is ordinarily used. A dock or quay exists and is used for certain well-known purposes, which do not generally involve, no doubt, the absolute exclusion of persons other than the shipowners and their servants and licences from the area used, but which do practically involve the exclusion of others from the area used as regards those purposes, namely, loading and unloading the ship." (See also the judgment of the same learned judge in *Bartell* v. *Gray & Co.*, *infra.*)

In *Merrill* v. *Wilson & Co.*, [1900] 1 K. B. 35; 70 L. J. K. B. 97, a ship was moored in a berth alongside a quay. The owners, who acted as their own stevedores, were proceeding to unload the cargo, which consisted of cattle, into lighters on the side furthest from the quay. For this purpose gangways were placed from the ship to the side of the quay, in order to give access to the ship. While placing one of these gangways in position, a man employed by the owners fell over the quay-side and was killed. *Held*, that the owners were "occupiers" of the quay.

In *Raine* v. *Jobson & Co.*, [1901] A. C. 404; 70 L. J. K. B. 771, the respondents, being ship-repairers, hired a berth in a dry dock in order to repair a ship. *Held*, that they were the occupiers of the dock.

In *Hainsborough* v. *Ralli Bros.*, (1901) 18 T. L. R. 21, the respondents were unloading a cargo of wheat from one of their own ships alongside a quay and piling it in a shed. *Held*, that they were occupiers of the quay.

In *Bartell* v. *Gray & Co.*, [1902] 1 K. B. 225, a ship was lying alongside a wharf in a dock. The respondents had contracted with the owners to do the necessary painting and plumbing for the purpose of fitting the ship out as a transport. They were executing their contract, and had possession of the ship as far as was necessary for that purpose. *Held*, that they were "occupiers" of the dock.

In *Cattermole* v. *The Atlantic Transport Co.*, [1902] 1 K. B. 204, the respondents were loading one of their own ships alongside a quay in a wet dock, partly from the quay-side, and partly from another ship lying on the other side of their own. *Held*, that they were "occupiers" of the dock.

SCOTCH CASES.—In *Jackson* v. *Rodger & Co.*, (1899), 1 F. 1053, the respondents, a firm of shipbuilders, who had contracted to build a ship

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Sect. 7, Sub-sec. 2 (*contd.*).

including her engines, having launched the ship, took her to a public dock in order to have her engines filled in by another firm. *Held*, that the respondents were the "occupiers" of the dock.*

The cases of *Abernethy & Co.* v. *Low*, (1900) 37 S. L. R. 506, and *Bruce* v. *Henry & Co.*, (1900) 37 S. L. R. 511, must now be regarded as overruled.

Meaning of "occupier" of machinery.

3. *Machinery or plant used in loading or unloading or coaling any ship in any dock, harbour, or canal.*—The meaning of "occupier" as regards this class of factory is fixed by the concluding words of s. 104, sub-s. 1, of the Factory and Workshop Act, 1901, set out on p. 50, and in Appendix C., p. 180.

"The person so using any such machinery or plant shall be deemed to be the occupier of a factory."

Instances of cases where employers have been held to be within the Act, as persons so using such machinery, are *Woodham* v. *The Atlantic Transport Co.*, [1899] 1 Q. B. 15; 68 L. J. Q. B. 17; and *Lawson* v. *The Atlantic Transport Co.*, (1900) 16 T. L. R. 181.

4. *Machinery or plant on premises on which machinery worked by steam, water, or other mechanical power is temporarily used for the purpose of the construction of a building or any structural work in connection with a building.*—The meaning of "occupier" as regards this class of factory is fixed by the concluding words of s. 105, sub-s. 1, of the Factory and Workshop Act, 1901, set out on p. 52, and in Appendix C., p. 180.

"The person so using any such machinery shall be deemed to be the occupier of a factory."

For instances where an employer has been held liable on the ground of using such machinery, see *McNicholas* v. *Dawson*, [1899] 1 Q. B. 773; 68 L. J. Q. B. 470; and *Fenn* v. *Miller*, [1900] 1 Q. B. 788; 69 L. J. Q. B. 439.

5. *Machinery or plant on any private line or siding used in connection with any factory, etc.*—The section which applies certain provisions of the Factory and Workshop Act, 1901, to such lines and sidings, and inferentially to machinery or plant thereon, is framed without reference to the fact that such machinery or plant thereby becomes a factory under the Act. Consequently it contains no definition of "occupier." By analogy from the two preceding sections it would seem that the person using the machinery or plant is to be deemed the occupier.

Meaning of "owner" of a mine.

"**Owner.**"—The meaning of "owner within the meaning of the Coal Mines Regulation Act, 1887, or the Metalliferous Mines Regulation Act, 1872, as the case may be," is fixed by ss. 75 and 41 respectively.

The Coal Mines Regulation Act, 1887, s. 75: "'Owner,' when used in relation to any mine, means any person or body corporate, who is the

* In this case the application was made by a man in the employ of the firm who filled in the engines, and the respondents were held liable as undertakers under s. 4.

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immediate proprietor or lessee, or occupier of any mine, or of any part thereof, and does not include a person or body corporate, who merely receives a royalty, rent, or fine from a mine, or is merely the proprietor of a mine subject to any lease, grant, or licence for the working thereof, or is merely the owner of the soil, and not interested in the minerals of the mine; but any contractor for the working of any mine, or any part thereof, shall be subject to this Act in like manner as if he were an owner, but so as not to exempt the owner from any liability."

Sect. 7, Sub-sec. 2 (*contd.*).

The Metalliferous Mines Regulation Act, 1872, s. 41: "The term 'owner,' when used in relation to any mine, means any person or body corporate, who is the immediate proprietor, or lessee, or occupier of any mine, or of any part thereof, and does not include a person or body corporate who merely receives a royalty, rent, or fine from a mine, or is merely the proprietor of a mine subject to any lease, grant, or licence for the working thereof, or is merely the owner of the soil, and not interested in the minerals of the mines."

"Person undertaking the Construction, Alteration, or Repair."—See next note.

"Person undertaking the Construction, Repair, or Demolition."—"Undertaking" here means "directly undertaking." A person who undertakes the construction, repair, or demolition of a building or part of a building as a sub-contractor is not an "undertaker." In *Cass* v. *Butler*, [1900] 1 Q. B. 777; 69 L. J. Q. B. 362, a contractor entered into a contract with a building owner to construct a building. He then entered into a sub-contract with the respondent to do the necessary painting. *Held*, that the respondent was not an "undertaker."

Meaning of "person undertaking construction," etc.

There may, however, be more than one "undertaker" to the same building. Any person who directly undertakes a substantial part of the construction (repair or demolition) of a building is an "undertaker." In *Mason* v. *Dean*, [1900] 1 Q. B. 770; 69 L. J. Q. B. 358, a firm of contractors contracted for the construction of a theatre. In the contract with the owner of the theatre power was reserved to the latter to take certain portions of the work out of the hands of the contractors and put them into the hands of other persons. Acting on this power, the owner of the theatre entered into a further contract directly with the respondent and put a substantial part of the work into his hands. *Held*, that the respondent was an undertaker, as directly undertaking a substantial part of the construction of a building.*

* The decisions in these two cases will place many workmen in a very difficult position. A workman may be in the regular employment of a contractor, and his employer may be engaged, conjointly with other contractors, in some work of railway construction, as in the case of *Appleby* v. *The Horsley Co.* (No. 2), [1899] 2 Q. B. 521; 68 L. J. Q. B. 894. He must in such case take care to ascertain whether his employer is engaged directly by the railway company, or by some large contractor, who is responsible to the railway company for the whole combined operation. In the first case, under *Mason* v. *Dean*, [1900] 1 Q. B. 770; 69 L. J. Q. B. 358, his regular employer is the proper respondent; in the latter, the large contractor is the only person against whom a claim can be made. If he

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Sect. 7, Sub-sec. 2 (*contd.*).

In *Knight* v. *Cubitt & Co.*, [1902] 1 K. B. 31; 71 L. J. K. B. 65, a firm of builders contracted to demolish and rebuild a house; it was not the practice of the firm themselves to do any work of demolition. Whenever the work they had undertaken to do involved demolition, they sub-let the demolition to other contractors. *Held*, that the firm were persons undertaking the demolition of the house.

Meaning of "undertaker" in case of building.

The owner of a building sometimes himself does the main work of construction, and contracts with other employers to do special parts of the work, such as the plastering or the carpentry. The question then arises —are persons so contracting to be regarded as "directly undertaking" the work which they perform, or are they in the position of sub-contractors? In other words, is the case within *Cass* v. *Butler* or *Mason* v. *Dean*? The Court of Appeal has decided that this is in each case a question of fact for the arbitrator. If the proper inference is that the building owner has undertaken the construction of the whole building, and has merely sub-let portions of the work to others, then he alone is the undertaker, and they are merely sub-contractors. If the proper inference is that the building owner has merely undertaken "that part of the work which is in his own particular line, leaving a substantial part of the construction to be undertaken" by others, then these others are undertakers as well as the building owner. *Stead* v. *Moore*, (1900) (the *Times* newspaper, June 18th).

A different view of this question seems to be taken in Scotland. In such a case the building owner alone is treated as the undertaker, and the others as sub-contractors, the question being regarded as one of law and not one of fact. *Stalker* v. *Wallace*, (1900) 37 S. L. R. 898. See *per* Lord Trayner: "He has undertaken to build a house for himself. He is the undertaker, and the persons that are assisting him in his work, although direct contractors with him, stand very much in the same position as the sub-contractor mentioned in the statute. He is himself building this house, and he has contracted with others to do for him that which he cannot do for himself, such as the plumber and plaster work."

A contractor, who supplies and pays labourers to act under the directions of the owner of a building for the purposes of its construction, repair, or demolition, is not a "person undertaking its construction, repair, or demolition." (*Percival* v. *Garner*, [1900] 2 Q. B. 406; 69 L. J. Q. B. 824.)

Scotch Case.—The owner of a building who contracts with another person to execute repairs on the building, and does not engage in the work himself, is not an "undertaker." (*McGregor* v. *Dansken*, (1899) 1 F. 536.)

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has any doubt, his safest course will be to make both his employer and the large contractor respondents, though this may result in his having to pay the costs of one or the other.

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These decisions *mutatis mutandis* apply to the words "person undertaking the construction, alteration, or repair" in the case of an engineering work.

Sect. 7, Sub-sec. 2 (*contd.*).

"Employer" includes any body of persons corporate or unincorporate and the legal personal representative of a deceased employer:

Effect of death of employer.

"**Includes . . . the Legal Personal Representative.**"—These words enable the workman in the case of the death of the employer to claim compensation from his estate. They also make the estate of the employer liable to continue any weekly payments under the Act for which the employer may have been responsible at the time of his death.

In the event of the death of an employer after proceedings for the recovery of compensation have been begun, the proper course would seem to be to make an application to the arbitrator to substitute the name of the employer's personal representative in the title of the proceedings.

At common law and under the Employers' Liability Act the workman has no action against the employer's estate, and if the employer dies after the action has been commenced, it must be abandoned. (*Gillett* v *Firbank*, (1887) 3 T. L. R. 618.)

"**Legal Personal Representative.**"—The meaning of these words in this connection is executor or administrator. (*Stockdale* v. *Nicholson*, (1867) L. R. 4 Eq. 359; 36 L. J. Ch. 793. *In re Ware, Cumberlege* v. *Cumberlege-Ware*, (1890) 45 Ch. D. 269; 59 L. J. Ch. 717.)

"Workman" includes every person who is engaged in an employment to which this Act applies, whether by way of manual labour or otherwise, and whether his agreement is one of service or apprenticeship or otherwise, and is expressed or implied, is oral or in writing. Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative or to his dependants, or other person to whom compensation is payable:

Who are "workmen" within the Act.

"**Service or Apprenticeship or otherwise.**"—These words do not cover the case of a contractor, even though he is himself working on the work for which he has contracted. See *Simmons* v. *Faulds*, (1901) 17 T. L. R. 352. A foreman bricklayer contracted with the respondent to carry out a piece of work for a fixed sum, supplying the labour and tools, but not the machinery. He worked himself upon the job, and drew money in payment as the work proceeded. *Held*, that he was not a "workman."

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Sect. 7, Sub-sec. 2 (*contd.*).

Contractor not a workman.

The line between a contractor and a workman employed on piece-work is often very difficult to draw. The question must be one of fact for the arbitrator in each case. The fact that the man employs others who work under him is not conclusive of the question. The question is in what capacity he agreed to do his work. Any stipulation which he may have made with the person engaging him has consequently a most material bearing upon the point. In *Evans* v. *The Penwyllt Dinas Silica Brick Co.*, (1901) 18 T. L. R. 58, a quarryman was employed under a written agreement, by which he was to be paid so much for every ton worked. His tools were found for him, but he hired and discharged the men who worked under him. Being in doubt as to his position under the Workmen's Compensation Act, he gave notice to terminate his agreement, and was thereupon told by the manager of the quarry owner that he would be compensated in case of accident. He sustained injury by accident, and claimed compensation. The arbitrator found that he was a workman. *Held*, that the conversation with the manager was evidence to show that he was employed in the capacity of a workman, but that even apart from this there was evidence on which the arbitrator could find that the applicant was a workman.

SCOTCH CASES.—In *McGregor* v. *Dansken*, (1899) 36 S. L. R. 393, the applicant for compensation had contracted with the owner of a building to do certain slater's work which was necessary in order to put it in repair, and was injured, while himself engaged upon the work. *Held*, that he was not a workman within the meaning of the Act. "Having perused the whole Act and relative schedules with care, it appears to me that it relates only to workmen who are engaged as servants of an employer—that it is only where there is this relation of servant to a master for hire that the provisions of the Act apply. . . . Of course every person who makes an agreement with another for the doing of work is a contractor in a general sense, but in questions relating to compensation for injuries to workmen the words 'contractor' and 'workman' have come to have a more restricted and distinctive meaning" (*per* the LORD JUSTICE CLERK). "No doubt [the words 'or otherwise'] are very comprehensive words, but they appear to me to comprehend only different degrees or characters of service" (*per* LORD TRAYNER).

In *Dunlop* v. *McCready*, (1900) 37 S. L. R. 779, a member of a gang employed upon piece-work and themselves employing helpers, received his pay through the leader of the gang, who divided the amount among its members. He had to conform to the orders of the respondents' foreman and to the general rules and regulations of the yard in which he worked. *Held*, that he was a workman within the meaning of the Act, and not an independent contractor.

Object of reference to legal representative.

"Shall include a Reference to his Legal Personal Representative."—These words appear to be introduced partly for convenience of drafting, so as to substitute a compendious word for a long formula (see in particular ss. 2 (*b*), 4, 5, and 6), and partly also to provide for the contingency of a

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workman dying before his claim for compensation has been heard. If the death results from the injury, there is no difficulty. The dependants have a separate cause of action in respect of their own loss. It is independent of the workman's claim for disablement, and (except as to amount) is not affected by an award made in respect of that claim during the workman's lifetime (see *O'Keefe* v. *Lovatt*, (1901) 18 T. L. R. 57). The position is different where the death results from some cause independent of the injury. In that case the dependants have no claim in respect of their own loss. There is no reason, however, why they should be deprived of arrears of weekly payments due to the workman in respect of disablement during his lifetime. The second object of the words seems therefore to be to give them the right to recover such arrears.

Sect. 7, Sub-sec. 2 (*contd.*).

Effect of death of workman.

Some such words are needed, for without them, by virtue of the principle, "*Actio personalis moritur cum persona*," on the death of the workman his claim would be absolutely barred. See *Bowker* v. *Evans*, (1885) 15 Q. B. D. 563; 54 L. J. Q. B. 421.

Under the Employers' Liability Act, if the workman dies through some cause unconnected with the accident before his case is heard, all claim to compensation is lost, and if an action has been commenced, it must abate. If his death results from the injury, then the dependants may pursue their own claim, and may elect between the remedy given by this Act and that given by Lord Campbell's Act (see s. 1, sub-s. 1 (*b*)).

"**Legal Personal Representative.**"—For the meaning of these words, see note on definition of "EMPLOYER," *supra*, p. 65.

"Dependants" means—

(*a*) In England and Ireland, such members of the workman's family specified in the Fatal Accidents Act, 1846, as were wholly or in part dependent upon the earnings of the workman at the time of his death; and

9 & 10 Vict. c. 93.

(*b*) In Scotland, such of the persons entitled according to the law of Scotland to sue the employer for damages or solatium in respect of the death of the workman, as were wholly or in part dependent upon the earnings of the workman at the time of his death.

"**Specified in the Fatal Accidents Act, 1846.**"—The "members of the workman's family specified in the Fatal Accidents Act, 1846" (commonly known as Lord Campbell's Act), are his "wife, husband, parent, and child" (s. 2).

Who may be "dependants."

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Sect. 7, Sub-sec. 2 (*contd.*).

By s. 5 it is provided that, "the word 'parent' shall include father and mother, and grandfather and grandmother, and stepfather and stepmother; and the word 'child' shall include son and daughter, and grandson and granddaughter, and stepson and stepdaughter."

A sister, or a younger brother, who were supported by a deceased workman, are thus not "dependants" within the meaning of the above definition. They cannot, therefore, claim compensation directly, but only through a parent or grandparent, *i.e.* in estimating the injury a parent has sustained by the death of a son, the arbitrator may take into account the obligation the parent is under to support the other children. (*Davies* v. *The Main Colliery Co.*, [1900] A. C. 358; 69 L. J. Q. B. 755.)

It was decided under the Fatal Accidents Act that a child *en ventre sa mère* was within the scope of the Act (*The George and Richard* (1871) L. R. 3 Adm. 466), but that an illegitimate child was outside it (*Dickinson* v. *The North Eastern Railway Co.*, (1864) 33 L. J. Ex. 91). It is presumed that these cases apply to this Act.

It has been decided in Scotland that an illegitimate child is not within the terms of the above definition as applied to Scotland. (*Clement* v. *Bell*, (1899), 1 F. 924.)

What constitutes dependency.

"**Dependent upon the Earnings of the Workman.**"—Dependency is a question of fact for the arbitrator in each case. "Dependent upon the earnings" means practically the same thing as "deriving benefit," or "deriving support from the earnings." In deciding this question there is no obligation on the arbitrator to take into account such considerations as "the class and position of life" of the applicant or "the standard of living in that class." Such considerations are "obscure," "vague," and "shadowy," and wholly foreign to the intentions of the legislature. "What the family was in fact earning, what the family was in fact spending for the purpose of its maintenance as a family, seems to me the only things that the County Court Judge could properly regard" (*per* Lord Halsbury, L.C., in *Davies* v. *The Main Colliery Co.*, [1900] A. C. 358; 69 L. J. Q. B. 755). In that case a boy, earning 8*s.* a week, was killed. His father, a collier in full work, earned 25*s.* a week; two sisters earned between them £1 a week. All the money was paid into a common fund, out of which the persons in question, a mother and three younger children, were supported. *Held*, by the House of Lords, that there was evidence on which the arbitrator could find that the father was dependent upon the earnings of the son.

The effect of the above case was considered by the Court of Appeal in *Howells* v. *Vivian & Sons*, (1901) 85 L. T. 529. In that case a collier, who was killed by accident, earned 25*s.* to 28*s.* a week. The cost of his keep was said to be 10*s.* to 12*s.* His father earned £1 13*s.* 9*d.* a week. The money was paid into a common fund, out of which father, mother, and son were supported. The arbitrator held, that as the father could have maintained his family without assistance from his son, he could not be dependent on his son's earnings. *Held*, that this circumstance did not of

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itself debar the father from being a dependant, and the case was accordingly sent back to be reconsidered. Note, however, *per* COLLINS, M.R.: "There must be some standard with regard to the class of persons with whom the Act deals, and their comfortable maintenance;" *per* MATHEW, L.J.: "It is not decisive . . . that the workman did contribute to the family fund." These *dicta* are difficult to reconcile with those in *Davies* v. *The Main Colliery Co.*, and await further elucidation.

Sect. 7, Sub-sec. 2 (*contd.*).

What constitutes dependency (contd.).

In *Simmons* v. *White*, [1899] 1 Q. B. 1005; 68 L. J. Q. B. 507, the Court of Appeal, while declaring that dependency was a question of fact for the arbitrator, pronounced *dicta* adopting the contentions repudiated by the House of Lords in *Davies* v. *The Main Colliery Co.* These *dicta* must accordingly be considered as overruled.

SCOTCH CASE.—In all the cases that have so far come before the English Courts, the test of dependency has been taken to be benefit actually received. In the Scotch Court of Session the principle has received an important extension, and it has there been laid down that the existence of a legal right to support is sufficient proof of dependency. In *Cunningham* v. *McGregor & Co.*, (1901) 38 S. L. R. 574, the deceased workman lived apart from his wife, and though earning £1 8*s.* 10*d.* a week, had, for the three years preceding his death, not contributed more than £5 a year towards her support. The arbitrator found that she was only in part dependent upon his earnings. *Held*, by the Court of Session, that this decision was wrong in law, and that the true view of the facts was that the wife was wholly dependent upon her husband's earnings. *Per* LORD YOUNG: "I can see nothing in that statement which displaces the legal presumption that a wife is wholly dependent on her husband." *Per* LORD MONCREIFF: "I think that a relative is 'in part dependent' on the deceased in the sense of the statute only when the relative has some independent means of support of a more or less permanent nature."*

"**Earnings.**"—It should be observed that there is nothing to limit the word "earnings" here to "earnings received from the employer in whose service the workman met his death." Cases have arisen in practice where a man has been killed before any wages have been paid to him, yet the right of his family to compensation has not been questioned. Again, a husband or a son may go into some other district, and circumstances may prevent him from sending home his usual contribution for the first few weeks, and before he has resumed them he may be killed by accident. It

Where death occurs before any earnings received.

* The very wide principles here laid down have so far received no judicial sanction in England. It may be doubted whether they will ever be adopted. The question has hitherto been regarded as one of fact and not as one of legal obligation. It should be remembered in this connection that though a man is bound to maintain his wife, he is under no corresponding obligation to support his children, except through the machinery of the poor law. See *Mortimer* v. *Wright*, (1840) 6 M. & W. 482; *Baseley* v. *Forder*, (1868) L. R. 3 Q. B. 563; 37 L. J. Q. B. 253. A wife, if unprovided for, may pledge her husband's credit for necessaries: a child cannot so pledge its father's credit.

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Sect. 7, Sub-sec. 2 (*contd.*).

is submitted that in such a case an arbitrator would be warranted in finding that his family was "dependent upon his earnings at the time of the death." Note the *dictum* of STIRLING, L.J., in *Pryce* v. *Penrikyber Navigation Colliery Co.*, (1901) 85 L. T. on p. 478: "By 'earnings' I understand there, not what the workman is actually earning at the time of his death, but what he is capable of earning."

"**At the Time of his Death.**"—This means at the time preceding his death. In considering whether an applicant is a dependant, it is immaterial to inquire whether he is put into possession of independent means of support after the death, or even by virtue of the death itself. Thus property devolving upon a man's widow at his death cannot be taken into account in determining either the fact of the dependency or the extent of it. *Pryce* v. *Penrikyber Navigation Colliery Co.*, [1902] 1 K. B. 221; 85 L. T. 477. See note on sched. i., par. i. (*a*), (i), p. 75.

(3.) A workman employed in a factory which is a shipbuilding yard shall not be excluded from this Act by reason only that the accident arose outside the yard in the course of his work upon a vessel in any dock, river, or tidal water near the yard.

What shipbuilding yards are within sub-section.

"**Factory which is a Shipbuilding Yard.**"—In the Factory and Workshop Act, 1901 [sched. vi. part 2 (25)], "shipbuilding yard" is defined as "any premises in which any ships, boats, or vessels used in navigation are made, finished, or repaired."

It must be remembered that a shipbuilding yard is not a factory unless steam, water, or other mechanical power is used in connection with the manufacturing process there carried on.

In *Raine* v. *Jobson & Co.*, [1901] A. C. 404; 70 L. J. K. B. 771, the respondents were ship-repairers, and had a yard not far from the docks. The yard was not capable of receiving ships, and they were in the habit of engaging a berth in a dock when required. *Held*, that the premises were not a "shipbuilding yard." *Per* LORD MACNAGHTEN: "They have a place of business here, which in their evidence they call a 'manufactory for the repair of ships;' but I do not think it can be described as a 'factory which is a shipbuilding yard.' . . . Having no water frontage, they have no means of launching a vessel, nor have they any place of their own into which they can take a vessel for repair."

The fact that a ship is being repaired, or that ships are from time to time repaired in an ordinary wet dock, does not constitute the dock a shipbuilding yard. (*Spencer* v. *Livett, Frank & Son*, [1900] 1 Q. B. 498; 69 L. J. Q. B. 338.) This point is hardly likely to arise again, as a man engaged in repairing a ship in a dock is now recognized as being within the Act as being employed "on, in, or about" the dock. See *Bartell* v. *Gray & Co.*, (1901), 18 T. L. R. 20.

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Sect. 7, Sub-sec. 2 (*contd.*).

SCOTCH CASE.—A yard in which materials for repairing ships are prepared and made ready for use, but in which no actual ship-repairing is done, is not "a factory which is a shipbuilding yard" (*Barclay, Curle & Co.* v. *M'Kinnon*, (1901) 38 S. L. R. 321).

"**Near the Yard.**"—These words have received judicial interpretation in the Scotch Courts.

In *McMillar* v. *Barclay, Curle & Co.*, (1899) 2 F. 95, it was held that a spot two miles from the yard might be "near the yard," and that in every case the question was one of fact for the arbitrator. *Per* LORD MCLAREN: "I hold that, as a matter of construction, the expression 'near a shipbuilding yard' must receive a wider meaning than the expression 'on, in, or about a factory,' because, if the words had meant the same, sub-s. 3 would have been altogether unnecessary. The introduction of that sub-section was to cover a case where a ship could not, on a fair construction, be held to be 'in or about' a 'factory which is a shipbuilding yard,' but where, nevertheless, having regard to the custom in the shipbuilding trade, and the necessity of a ship being taken to a dock which would not always be 'in or about' the yard, it was considered desirable to suppose an extension of the employment of the factory to a dock that in a reasonable sense might be regarded as being in proximity to the yard."

In *Jackson* v. *Rodger & Co.* (No. 1), (1899) 1 F. 1053, it was held that a dock fifteen miles from a shipbuilding yard was not "near" the shipbuilding yard within the meaning of the proviso.

Application to workmen in employment of Crown.

8.—(1.) This Act shall not apply to persons in the naval or military service of the Crown, but otherwise shall apply to any employment by or under the Crown to which this Act would apply if the employer were a private person.

50 & 51 Vict. c. 67.

(2.) The Treasury may, by warrant laid before Parliament, modify for the purposes of this Act their warrant made under section one of the Superannuation Act, 1887, and notwithstanding anything in that Act, or any such warrant, may frame a scheme with a view to its being certified by the Registrar of Friendly Societies under this Act.

Provision as to existing contracts.

9. Any contract existing at the commencement of this Act, whereby a workman relinquishes any right to compensation from the employer for personal injury arising out of and in the course of his employment, shall not, for the purposes of this Act, be deemed to continue after the time at which the workman's contract of service would determine

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Sect. 9 (*contd.*).

if notice of the determination thereof were given at the commencement of this Act.

Commencement of Act and short title.

10.—(1.) This Act shall come into operation on the first day of July one thousand eight hundred and ninety-eight.

(2.) This Act may be cited as the Workmen's Compensation Act, 1897.

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SCHEDULES.

FIRST SCHEDULE.

A.D. 1897.

Scale and Conditions of Compensation.

Scale.

Sched. I., Para. 1 (*a*) (i.).

(1.) The amount of compensation under this Act shall be—

(*a*) where death results from the injury—

*Amount of compensation: in case of death and total dependency.**

(i.) if the workman leaves any dependants wholly dependent upon his earnings at the time of his death, a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of one hundred and fifty pounds, whichever of those sums is the larger, but not exceeding in any case three hundred pounds, provided that the amount of any weekly payments made under this Act shall be deducted from such sum, and if the period of the workman's employment by the said employer has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be 156 times his average weekly earnings, during the period of his actual employment under the said employer;

* The marginal notes to the paragraphs of the schedules do not occur in the Act, but have been inserted by the authors for convenience of reference.

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Sched. I., Para. 1 (*a*) (i.) (*contd.*).

"**The Amount of Compensation.**"—The scheme of the Act may best be appreciated by reference to the following table:—

Scheme of the Act, as to amount.

Injury.	Amount.
(A) DEATH.	
(i.) Total Dependency.	Three years' wages: Maximum, £300. Minimum, £150.
(ii.) Partial Dependency.	"Sum reasonable and proportionate to the injury:" Maximum, three years' wages or £300.
(B) DISABLEMENT.	
(i.) Total.	Weekly payment not exceeding half-weekly earnings: Maximum, £1.
(ii.) Partial.	Weekly payment not exceeding half-weekly earnings: Regard to be had to difference between weekly wages before accident and earning capacity after accident. Maximum, £1.

"**Where Death results from the Injury.**"—It is to be observed that in cases of death the amount of compensation payable to the persons wholly dependent is fixed by the Act, and is not within the discretion of the arbitrator. Subject to a limit of £300, the dependants are to receive a sum equal to the deceased's earnings under the same employer during three years next preceding the accident, or the sum of £150, whichever be greater.

Death need not directly result.

It is not necessary that death should *directly* result from the injury. It may follow upon a chain of circumstances. In such a case the arbitrator "would have to consider whether the chain of circumstances was such as would naturally arise as the reasonable and natural consequence of the injury, nothing having been introduced into the case which might be called a foreign or external cause, beyond what might naturally be expected," *per* WILLS, J., in *Isitt* v. *Railway Passengers Assurance Co.*, (1889) 22 Q. B. D. 504; 58 L. J. Q. B. 191 (a decision upon substantially identical words in a policy of assurance). In that case a man dislocated his shoulder by accident. He was put to bed, and suffered great pain, was extremely restless, and was unable to bear warm or heavy clothing. While in bed he caught a cold, which developed into pneumonia, from which he died within a month of the accident. It was found as a fact that "his catching cold and the fatal effects of the cold were both due to the condition of health to which he had been reduced by the accident." *Held*, that the man "died from the effects of injury caused by accident" within the meaning of the policy.

In the recent case of *Dulieu* v. *White & Sons*, [1901] 2 K. B. 669; 70

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L. J. K. B. 837, it was held that *in an action for negligence* damages may be recovered where physical injuries are caused by nervous shock without any actual impact. It is presumed that the principles laid down in the judgments would apply to the interpretation of the above words. If therefore a workman sustains a nervous shock from an accident (whether accompanied by physical impact or not), and illness or death results from the effects of the shock, compensation would be payable. See *per* PHILLIMORE, J.: "I hold that the fact of one link in the chain of causation being mental only makes no difference."

"**Dependants wholly dependent.**"—See note on definition of "DEPENDANTS," s. 7, sub-s. 2, on pp. 67–69.

Test of total dependency.

In considering whether a widow or other dependant was "*wholly* dependent upon the earnings of a workman at the time of his death," it is quite immaterial that at his death property (whether belonging to the deceased in his lifetime or not) thereby devolves upon her. The test is not, whether she is left absolutely destitute by his death, but whether at the time of his death (*i.e.* in the period immediately preceding his death) she had any other means of support except his earnings. In *Pryce* v. *Penrikyber Navigation Colliery Co.*, [1902] 1 K. B. 221; 85 L. T. 477, a workman at the time of his death was possessed of personal estate of the value of £190, and, for the purpose of the argument, it was admitted that by this his widow, who was his personal representative, benefited to the extent of £100. There was no evidence that the £190 produced any income during his lifetime. *Held*, that the widow was "wholly dependent upon his earnings at the time of his death."

It was intimated that the decision might be otherwise if it were shown that the deceased possessed property which produced income during his lifetime. In that event, the case would come within (*a*) (ii.) of this paragraph, and the amount to be awarded would not be the arbitrary and fixed amount here prescribed, but a sum "reasonable and proportionate to the injury." See note below on these words, p. 69.

"**Earnings at the Time of his Death.**"—See note on these same words in definition of "DEPENDANTS," s. 7, sub-s. 2, on p. 69.

The *fact* of dependency must first be determined. To ascertain this fact the arbitrator (it is submitted) should consider whether the persons claiming were supported by earnings of the deceased, *from whatever source derived*, within a reasonable period before the death. In assessing *the amount* he is restricted to "earnings in the employment of the same employer."

Meaning of "earnings."

"**Earnings.**"—"Earnings" here mean gross earnings. In *Houghton* v. *Sutton Heath Collieries Co.*, [1901] 1 K. B. 93; 70 L. J. K. B. 61, sixpence a week was by a rule of the colliery deducted from a collier's wages in respect of oil supplied for his lamp. *Held*, that it must not be deducted in estimating his average weekly earnings, but that the average must be based upon the gross amount received.

SCOTCH CASE.—In *Nelson* v. *Kerr & Mitchell*, (1901) 38 S. L. R.

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Sched. I., Para. 1 (a) (i.) (*contd.*).

645, a collier was assisted by his son to whom he paid nothing. It was usual in the colliery for boys so assisting colliers to be paid for the assistance rendered. *Held*, that the collier was entitled to have his average based upon the gross amount received, without any deduction.

Things, however, not capable of pecuniary valuation, such as tuition received by an apprentice, must not be taken into account. *Pomphrey* v. *Southwark Press*, [1901] 1 K. B. 86; 70 L. J. K. B. 48 (cf. *Noel* v. *Redruth Foundry Co.*, [1896] 1 Q. B. 453). Incidental advantages received by a workman, which are capable of pecuniary valuation (*e.g.* a cottage rent free), are in a different position, and can no doubt be regarded. (See *dicta* by all three Lords Justices in *Pomphrey* v. *Southwark Press.*)

Overtime.

Sums earned by working "overtime" (it is submitted) should be included, but not sums earned by casual services incidentally rendered outside the scope of the workman's contract. The principle here laid down is quite consistent with the case of *Hathaway* v. *The Argus Printing Co.*, [1901] 1 K. B. 96; 70 L. J. K. B. 12. In that case a man agreed to work for a firm of employers for two nights a week at a fixed rate of wages. He also worked for the same employers in the course of the week casually, at such work as was from time to time offered him, independently of his contract. *Held*, that in estimating his average weekly earnings, sums earned by this casual work could not be taken into account. Under the Employers' Liability Act the word "earnings" has been held to include sums earned by "overtime." See *Bortick* v. *Head, Wrightson & Co.*, (1885) 53 L. T. 909; 2 T. L. R. 103.

Only last period of continuous employment to be regarded.

"**In the Employment of the Same Employer.**"—Employment here means "*continuous*" employment. In calculating compensation under any of the scales prescribed by this schedule, the only period of employment to be taken into account is the last continuous period prior to the injury. If there has been a break in the service, any sums earned before that break are to be disregarded.

Two classes of employment have to be considered; the first where a man works on a continuous *contract*, the second where he *in fact* works continuously without any contract to do so.

(1.) Where a man works on a continuous contract, and that contract is terminated, *e.g.* by a strike, or by incapacity, and he afterwards resumes on a fresh contract, only the period *after* the resumption of work can be taken into account (*Jones* v. *Ocean Coal Co.*, [1899] 2 Q. B. 124; 68 L. J. Q. B. 731. *Appleby* v. *Horseley Co.* (No. 1), [1899] 2 Q. B. 521; 68 L. J. Q. B. 892). Where, however, a man passes from one grade or class of employment to another, without interruption, but under fresh conditions, the employment is regarded as continuous, and the line is not drawn at the time of the change. (*Price* v. *Marsden*, [1899] 1 Q. B. 493; 68 L. J. Q. B. 307.)

(2.) Where a man is not working on a continuous contract, the last continuous period of *employment* is the only period to be regarded.

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Sched. I., Para. 1 (*a*) (i.) (*contd.*).

There may be continuity of employment without continuity of the contractual relationship. See *per* VAUGHAN WILLIAMS, L.J., in *Hewlett* v. *Hepburn* (1899) 16 T. L. R. 56.

Test of "continuous employment."

"This Court has said that when a workman is in the employment of a master at times separated by intervals, the arbitrator is not entitled to take into consideration the whole of the employment, but must consider whether the different periods of employment are not separated by intervals which negative continuity in the employment. Where the intervals are long, the conclusion is made easier—that the employment is not continuous. It does not follow that because the intervals are short the employment is continuous. That must depend on the nature of the employment. To enable one to say that a series of short periods should be taken together and treated as a continuous term, there must be some *nexus* to join them. There must be some contract express or implied which raises a reasonable expectation of continuity in the employment" (*per* COLLINS, L.J., in *Hathaway* v. *Argus Printing Co.*, [1901] 1 K.B. 96; 70 L. J. K. B. 42).

In *Williams* v. *Poulson*, (1900) 16 T. L. R. 42, a man worked for forty-six weeks for some part of each week except four (though sometimes for only one day in the week). *Held*, that there was evidence on which the arbitrator could find that this was a continuous period of employment.

In *Hewlett* v. *Hepburn* (*supra*) a man worked from August 24th, 1897, to February 9th, 1899, but was absent through illness for two periods of twelve weeks and two weeks. There was no agreement as to notice on either side. He left his tools at the employer's premises and resumed work after each illness without any formal re-engagement. The arbitrator found that he was employed by the hour, and that the last period of continuous employment began with the resumption of work after the last illness. The Court of Appeal declined to disturb his award.

"Provided that . . . Weekly Payment . . . shall be deducted."—It is clear from these words that an arbitrator's jurisdiction is not exhausted when he has awarded an injured workman a weekly payment. If "death results from the injury," the award in favour of the workman is not a bar to a fresh award in favour of the dependants. *O'Keefe* v. *Lovatt*, (1901) 18 T. L. R. 57. The amount of weekly payments received under the first award must under these words be deducted from what would otherwise be the amount of the second.

Deduction from compensation of sums received in lifetime.

If a workman takes a lump sum in discharge of all claims, and thereafter "death results from the injury," it is submitted that the dependants would not thereby be debarred from claiming in respect of their own loss. The right to compensation conferred by the Act on dependants is entirely distinct from that given to the workman himself, and he would have no power to bind them by any agreement he might make for his own benefit. The Act does not say what deduction, if any, should in such a case be made by the arbitrator from the sum to which the dependants would have been entitled had they been the original applicants. It is not clear

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Sched. I., Para. 1 (a) (i.) (*contd.*).

whether, if an employer without admitting liability makes weekly payments to an injured workman, who subsequently dies, or to his dependants, he can claim to deduct these payments from any amount ultimately awarded as compensation under this paragraph. He may, however, doubtless secure himself in this respect by taking a properly worded receipt.

How average weekly earnings are to be calculated.

"**Average Weekly Earnings.**"—In calculating the average weekly earnings, the proper course is to divide the total earnings during the period of "continuous employment" by the number of weeks over which such period is spread without deducting from such divisor weeks during which there have been temporary gaps in the employment. Thus, where a man had, prior to the accident, worked for forty-six weeks for some part of each week except four (though sometimes he only worked for one day in the week), and the arbitrator found as a fact that he had been continuously employed during the forty-six weeks, it was held that, in order to ascertain his average weekly earnings, his total earnings during that period (£38 13*s.* 6*d.*) should be divided by forty-six. (*Williams* v. *Poulson*, (1900) 16 T. L. R. 42.) See, also, the earlier case of *Keast* v. *Barrow Hematite Co.*, (1899) 15 T. L. R. 141, and the Scotch case, *Small* v. *McCormick & Ewing*, (1899) 1 F. 883; 36 S. L. R. 700.

Where employment for less than two weeks.

There is no implied intention in the use of the word "average" to exclude from the benefits of the Act workmen who have been working for an employer for less than two weeks. The word "average" is here "loosely and inaccurately used." It merely means that "one week must be taken with another." The right to compensation is given by the opening words of the Statute (s. 1, sub-s. 1), and is not cut down by the phraseology adopted in the Schedule. This is the effect of the judgments of the House of Lords in *Lysons* v. *Knowles* and *Stuart* v. *Nixon & Bruce*, [1901] A. C. 79; 70 L. J. K. B. 170, overruling the decisions of the Court of Appeal.

The House of Lords, while deciding that workmen who had been employed for less than two weeks were within the scope of the Act, did not definitely indicate how the "average weekly earnings" of such workmen were to be calculated. This has now been made clear by a series of decisions in the Court of Appeal.* The general principle of the decisions

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* Considerable difficulty was caused by the form of the Order of the House of Lords in *Lysons* v. *Knowles* as given in the *Law Reports*, in [1901] A. C. on p. 101. In the first place, by a misprint, the Order is incorrectly reported. It actually runs, "Order of the County Court Judge restored *with the variation of* 12*s.* *for* 24*s.*" The Lords reduced the amount awarded by one half, on the ground that the amount on which the award was based was earned in two trade working weeks, and must consequently be divided by two. This, however, presents fresh difficulties. As it stands the Order seems to involve two propositions, (1) that week is used in the sense of trade working week, (2) that where a man has only worked a fraction of a week the arbitrator, in calculating his average weekly earnings, is restricted to the amount actually earned. As to the first of these propositions, it is now clear, from the judgment of the Court of Appeal in *Wheale* v. *The Rhymney Iron Co.*, [1902] 1 K. B. 57; 71 L. J. K. B. 28; *Watters* v. *Clover, Clayton & Co.*,

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Sched. I., Para. 1 (*a*) (i.) (*contd.*).

seems to be as follows. Where an arbitrator has not before him sufficient materials for the calculation of an "average," he must use such materials as he has to determine what would be a *typical week's earnings* of the particular man in the particular employment. The question he has to ask himself is, what has the man or what have his dependants lost per week through his inability to be employed by the same employers? (See *per* COLLINS, M.R., in *Wheale* v. *The Rhymney Iron Co.*, [1902] 1 K. B. 57; 71 L. J. K. B. 28, and *Bartlett* v. *Tutton & Sons*, [1902] 1 K. B. 72; 71 L. J. K. B. 52.)

The various cases which arise for the application of these principles may be classified as follows:—

(1) *Where wages fixed by contract;*

(1.) Where the actual amount of a man's weekly earnings is fixed in advance by contract, the weekly wage contracted for is his average weekly earnings. *Ayres* v. *Buckeridge*, [1902] 1 K. B. 57; 71 L. J. K. B. 28. The same result seems to follow from the *dicta* of the Lords in *Lysons* v. *Knowles*, [1901] A. C. on pp. 87, 93.

(2) *where one full week worked;*

(2.) Where a man has worked for a full week, and there is a presumption (arising either from a contract or from a "course of business") that the employment would have continued at the same rate, the week worked may be taken as a "fair sample," and the amount earned treated as the "average weekly earnings." Week here means "six continuous working days" (*Watters* v. *Clover, Clayton & Co.*, (1902) 18 T. L. R. 60).

"Week," as used in the Act, does not necessarily mean "trade working week" (as it is apparently treated as meaning in the Order of the House of Lords in *Lysons* v. *Knowles, supra*), nor calendar week (as laid down in the Scotch case of *Cadzow Coal Co.* v. *Gaffney*, (1900) 3 F. 72; 38 S. L. R. 40). If, therefore, a man's employment, though lasting only six working days, extends into two trade weeks, or two calendar weeks, it is not necessary to divide the total earned by two in order to ascertain the average.

(1901) 18 T. L. R. 60, that week does not necessarily mean trade working week. As to the second proposition, this has now been restricted by the Court of Appeal to the case of the purely casual labourer (see *Bartlett* v. *Tutton & Sons, supra*). The Court of Appeal were pressed with the form of this Order in *Wheale* v. *The Rhymney Iron Co.* (*supra*), but they explained it on the supposition that the applicant in that case was treated as a "casual day labourer," working without any presumption of continuity of employment. (That he was paid by the day appears by the report of *Lysons* v. *Knowles* in the Court of Appeal.) In view of the fact that the Order as finally drawn up contained a variation of the original award, which did not correspond to any expression of opinion discoverable in the judgments, the House of Lords was petitioned to reconsider the form of the Order. The House declined to do so, and left the further elucidation of the question to the Court of Appeal.

In view of the decisions of the House of Lords in *Lysons* v. *Knowles* and *Stuart* v. *Nixon & Bruce*, the various points decided in the following Scotch cases must be treated as either overruled or superseded. *Doyle* v. *Beattie & Sons*, (1900) 37 S. L. R. 914; *Russell* v. *M'Cluskey*, (1900) 37 S. L. R. 931; *Cadzow Coal Co.* v. *Gaffney*, (1900) 38 S. L. R. 40; *Forrester* v. *McCallum*, (1901) 38 S. L. R. 448. See note on sched. ii., par. 14 (*c*) *post*, on p. 106; and remarks of COLLINS, M.R., in *Wheale* v. *The Rhymney Iron Co.*, [1902] 1 K. B. on p. 67.

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Sched. I., Para. 1 (*a*) (i.) (*contd.*).

(3) *where more than one, but less than two weeks worked;*

(3.) If more than one week but less than two weeks have been worked, and there is a presumption (arising either from a contract or from a course of business) that the employment would have continued at the same rate, the full week may be treated as the "fair sample," and the amount earned therein as the "average weekly earnings," and the fraction of the second week may be disregarded. (*Wheale* v. *The Rhymney Iron Co.*, [1902] 1 K. B. 57; 71 L. J. K. B. 28.) "Week" here, as above, in (2), means "six continuous working days," and if the employment extends into two "trade working weeks," or two calendar weeks (as, for example, if a man works four days in one such week, and four days in another), there is no necessity to divide the total earned by two in order to ascertain the average. Cf. the Scotch case, *Nelson* v. *Kerr & Mitchell*, (1901) 38 S. L. R. 645.

(4) *where less than one week worked:*

(4.) Where less than a week has been worked, but there is a presumption (as above) that the employment would have continued, the arbitrator may construct a typical week from the amount earned in the fraction so worked. Thus, if a man, working in ordinary continuous employment, is proved to have earned 10*s.* in two days, the arbitrator would be justified in holding that his "average weekly earnings" would be 30*s.*, or if it was proved to him that men in that particular employment usually worked five days a week, he would be justified in putting the average at 25*s.*

This is nowhere laid down in terms, but it follows from the principles enunciated in the cases above cited.

(5) *where workman is a "casual labourer;"*

(5.) Where the evidence is that the workman is only a casual labourer, and there is no presumption that he would have worked longer than the hours or day during which he had in fact been working prior to the accident, the arbitrator, in determining the "average weekly earnings,' is restricted to the amount actually earned during these hours or days.* *Bartlett* v. *Tutton*, [1902] 1 K. B. 72; 71 L. J. K. B. 52.

(6) *where no wages have yet been earned;*

(6.) Where a man has been injured, while in the course of his employment, but before he has earned any wages at all, the arbitrator is "at large" to award any sum which he may think reasonable. This follows from certain *dicta* of some of the Lords in *Lysons* v. *Knowles* (*supra*). *Per* LORD HALSBURY, L.C., [1901] A. C. on p. 86: "If I came to the conclusion that there had been no mode by whcih the *quantum* should be fixed in the schedule, I should still be of opinion that there was no repealing of the right which had first been granted, but that by arbitration, or by some other means, which I think would be quite within the powers of the Act, the compensation should be ascertained." *Per* LORD DAVEY (*ibid.*), p. 96: "Even if I came to the conclusion that the construction put by the Court

* Certain *dicta* of LORDS HALSBURY, LINDLEY, and MACNAGHTEN, in *Stuart* v. *Nixon and Bruce*, [1901] A. C. 70; 70 L. J. K. B. 170, or pp. 101 and 93 respectively, seem to suggest that where the employment is of a casual nature, in case of death the compensation should be the minimum of £150, whatever the amount actually earned. These *dicta* should, however, be received with caution until the point has been expressly considered.

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Sched. I., Para. 1 (*a*) (i.) (*contd.*).

of Appeal on the schedule was the right one, I should say that this was a *casus omissus* which had been overlooked in framing the schedule, and that the right being given by the statute, there was nothing in the schedule to take away the right, and that the Court must find some other means of arriving at the amount and conditions upon which it was to be enjoyed so far as the schedule was inapplicable to the case."

In such cases the arbitrator must award what seems to him a reasonable amount, but it is submitted that he is not free to adopt any standard he pleases. In *Bartlett* v. *Tutton & Sons*, [1902] 1 K. B. 72; 71 L. J. K. B. 52, where a casual labourer earned 3*s*. 3*d*. in one day, working at the rate of 6*d*. an hour, the arbitrator adopted the standard of the Employers' Liability Act, *i.e.* he awarded a weekly payment based upon the average weekly wages of "a person in the same grade employed in the like employment and in the district in which the workman was employed at the time of the injury." The Court of Appeal disapproved of this standard, on the ground that it involved the principle that a man might be entitled to compensation in respect of wages other than those which he could earn from the same employers. In that case it was held that there was a basis on which compensation could be assessed in accordance with the schedule, but it would seem that the standard there adopted by the arbitrator would be equally inapplicable even where no such basis exists. See the judgment of COLLINS, M.R., in that case. While, therefore, the arbitrator is "at large," it is submitted that he should follow the schedule as far as it is applicable, and should consequently take account of the following considerations:—

(*a*) He must observe the *limits* of the schedule.

(*b*) He must still ask himself the question propounded by COLLINS, M.R., in *Wheale* v. *The Rhymney Iron Co.* and *Bartlett* v. *Tutton & Sons* (*supra*), "What has the man lost through his inability to be employed *by the same employer?*"

(*c*) In case of death and total dependency, he must at least give the minimum sum of £150; but he is not necessarily confined to that minimum.

SCOTCH CASE.—In *Leonard* v. *Baird & Co.*, (1901) 38 S. L. R. 649, a collier was killed after he had descended the pit, but before he had commenced work. The arbitrator awarded his widow £150. *Held*, that he had acted in accordance with the statute.

Whether sums earned since accident to be taken into account.

It was decided in Scotland, in *Doyle* v. *Beattie & Sons*, (1900) 37 S. L. R. 914, that where a man sustains injuries which ultimately result in his death, but is able to work during the period which intervenes between the death and the injuries, sums earned during this period may be taken into account in assessing the average. The Court were no doubt influenced in this view by the harsh effect of the decision of the Court of Appeal in *Lysons* v. *Knowles*, and by the desire to obtain a basis on which an average could be calculated in accordance with that decision. Cf. the remarks of COLLINS, M.R., at the end of his judgment in *Wheale* v.

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Sched. I., Para. 1 (*a*) (i.) (*contd.*).

The Rhymney Iron Co., [1902] 1 K. B. on p. 67. The decision is now of doubtful authority, and is in direct conflict with a dictum of VAUGHAN WILLIAMS, L.J., in *Appleby* v. *Horseley Co.* (No. 1), [1899] 2 Q. B. 521; 68 L. J. Q. B. 892.

Amount of compensation in case of death, and partial dependency.

(ii.) if the workman does not leave any such dependants, but leaves any dependants in part dependent upon his earnings at the time of his death, such sum, not exceeding in any case the amount payable under the foregoing provisions, as may be agreed upon, or, in default of agreement may be determined, on arbitration under this Act, to be reasonable and proportionate to the injury to the said dependants; and

"If the Workman does not leave any such Dependants."—A very important decision on these words has been delivered in the Scotch Courts. In *Fagan* v. *Murdoch*, (1899) 1 F. 1179; 36 S. L. R. 921, a workman, earning an average wage of £1 3*s*. 6*d*. a week, was killed by an accident, and left a widow, who was totally dependent upon his earnings. The total amount payable as compensation was £187, but the widow agreed with the employer to take £80 and £20 for funeral expenses in discharge of all claims. Subsequently the father of the deceased made a claim under the Act for compensation as part dependant, and the arbitrator awarded him £25. *Held*, that in the circumstances the arbitrator had no jurisdiction to award any sum at all, as there can be no claim under the Act by a person only in part dependent on a workman at the time of his death, if there is in existence a person wholly dependent. *Per* the LORD PRESIDENT: "It seems to me that this section, when read as a whole, defines the total liability of the employer, and presents three alternative cases which are mutually exclusive. If there are persons wholly dependent, then the employer has got to pay three years' earnings, not exceeding £300. The next case contemplated is that of those partially dependent, but their right is conditioned by the opening words, 'if the workman does not leave any such' (*i.e.* wholly dependent) 'dependants.' If he has left such wholly dependent dependants, then the Act does nothing for the partially dependent. There is no provision authorizing the arbitrator to carve a provision for them out of what is devoted to the wholly dependent, and no provision for any further liability on the part of the employer than what is set forth in the three cases put in the sub-section." *

* With very great deference to the learned Scotch judges, who decided this case, it is submitted that, whether the decision on the particular facts was correct or not, the principles laid down in the above judgment are erroneous, and ought

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Sched. I, Para. 1 (*a*) (ii.) (*contd.*).

Meaning of "reasonable and proportionate to the injury"

"Reasonable and Proportionate to the Injury."—It does not seem possible to give any specific meaning to the word "proportionate" as distinct from the word "reasonable." Subject to the limits referred to, the arbitrator's discretion is absolute, but the sum awarded must be on such a scale as to *bear some relation* to the extent of the injury, *i.e.* pecuniary loss, sustained by the dependants. A similar phrase is used in the Fatal Accidents Act, 1846 (9 & 10 Vict. c. 93), s. 2.

The Act gives the arbitrator no guide as to the amount to be awarded in cases of partial dependency. The problem which he has to solve may be stated in the same terms as that discussed above (p. 79). What have the dependants lost which, if the workman had not been killed, they would have received from his employer? In determining such a question future contingencies must be taken into account. Any arrangement by which the deceased may have promised to contribute a fixed sum is of course most material. On the other hand, the likelihood of the deceased's getting married, had he lived, or the likelihood of his earning higher wages as he grew older, are obvious contingencies that may be taken into account.

A method that is frequently adopted is to calculate the net benefit (after deduction of cost of keep, pocket money, etc.) received from the deceased in his lifetime, and award 156 times that amount. This was the method adopted by the arbitrator in *Davies* v. *The Main Colliery Co.*, [1900] A. C. 358; 69 L. J. Q. B. 755, and it seems to have received the tacit approval of the House of Lords. The matter must, however, always be determined by the facts of the particular case.

In determining what is reasonable and proportionate to the injury, the arbitrator, as part of his award, may allow a sum for "the reasonable expenses of medical attendance and burial." The fact that these may be awarded where there are no dependants does not mean that they may not be awarded when there are dependants. It rather shows that such expenses are intended to be the subject of compensation. The case

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not to be treated as authoritative by arbitrators in England, until the question is decided by the Court of Appeal. Paragraph 1 of this schedule deals simply with the amount of the compensation, and says nothing about the persons to whom it is payable. Similarly, s. 1, sub-s. 1, of the Act, says that the employer shall be liable to pay compensation, but says nothing as to the persons to whom it is to be paid. These persons are, by paragraph 4 of this schedule, in case of death, the workman's "dependants," *i.e.* his dependants *simpliciter*; and by s. 7, sub-s. 2, of the Act, "dependants" are defined as meaning "such members of the workman's family specified in the Fatal Accidents Act, 1846, as were *wholly or in part* dependent upon the earnings of the workman at the time of his death." It is submitted, therefore, that there is nothing to exclude a part dependant in case of death from a share in the compensation awarded; and that such a person may apply under paragraph 5 of the schedule, and Rule 5 of the Rules (p. 112), for an apportionment of that compensation. If the personal representative of the deceased workman has agreed with the employer the amount of the compensation, and that amount has been paid over, then, no doubt, it would not be competent for a part dependant to institute fresh proceedings against the employer for a further sum. His only rights would be against the personal representative for an apportionment, under the paragraph and rule just referred to.

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Sched. I., Para. 1 (*a*) (ii.) (*contd.*).

of *Dalton* v. *S. E. Railway Co.*, (1858) 4 C. B. N. S. 296; 27 L. J. C. P. 227, which decided that under very similar words in Lord Campbell's Act ("proportioned to the injury") these expenses could not be taken into account, is not to be regarded as an authority on the words of this Act. *Beavan* v. *Crawshay Bros.*, [1902] 1 K. B. 25; 71 L. J. K. B. 49.

Provision for medical and funeral expenses.

(iii.) if he leaves no dependants, the reasonable expenses of his medical attendance and burial, not exceeding ten pounds;

By paragraph 4 of this schedule the payment is to be made to "the person to whom the expenses are due," *i.e.* the medical attendant and undertaker or the person who has paid their charges.

Compensation in case of incapacity.

(*b*) where total or partial incapacity for work results from the injury, a weekly payment during the incapacity after the second week not exceeding fifty per cent. of his average weekly earnings during the previous twelve months, if he has been so long employed, but if not, then for any less period during which he has been in the employment of the same employer, such weekly payment not to exceed one pound.

"**After the Second Week.**"—Cf. s. 1, sub-s. 2 (*a*), of the Act, p. 7.

"**Average Weekly Earnings.**"—See note on same words, *supra*, p. 78, where the principles on which the average is to be determined are fully discussed. "Earnings" here, though it does not appear by express words in the immediate context, means "earnings received in the employment of the same employer." See *Bartlett* v. *Tutton & Sons*, [1902] 1 K. B. 72; 71 L. J. K. B. 52. *Per* COLLINS, M.R.: "The Legislature did not intend to give full compensation, but only compensation in respect of the loss of not being able to be employed by the same employer."

"**In the Employment of the Same Employer.**"—See note on same words, *supra*, p. 76.

Effect of accident on earnings to be considered.

(2.) In fixing the amount of the weekly payment, regard shall be had to the difference between the amount of the average weekly earnings of the workman before the accident and the average amount which he is able to earn after the accident, and to any payment not being wages which he may receive from the employer in respect of his injury during the period of his incapacity.

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Questions on the interpretation of this paragraph most commonly arise on applications for a review under paragraph 12 of this schedule (see p. 92). The notes on that paragraph should accordingly be consulted and read in connection with those immediately following.

Sched. I., Para. 2 (*contd.*).

"**Regard shall be had to the Difference.**"—There is nothing in these words to cut down the limits imposed by paragraph 1 (*b*). They merely mean that in fixing the compensation within these limits, the arbitrator must bear in mind the difference between the old and present wages. Subject to his so doing, his discretion is unfettered, and he is not bound to award only one half of this difference.* *Illingworth* v. *Walmsley*, (1900) 69 L. J. Q. B. 519; 16 T. L. R. 281.

The words have been considered somewhat more fully, in the Scotch Court of Session, in the case of *Geary* v. *Dixon*, (1899) 36 S. L. R. 640. It was there laid down (1) that an injured workman is not entitled as a matter of right to a weekly payment representing the whole of the difference between his average wage before, and his average wage after, the accident, such difference being merely one of the elements which the arbitrator is to take into account in fixing the amount of compensation, but that (2) such difference is not subject to the limitation of 50 per cent. imposed by paragraph 1 (*b*) of this schedule, and it may therefore be competently awarded *in toto* by the arbitrator as compensation.

See also the case of *Ellis* v. *Knott* (the *Times* newspaper, April 9th, 1900). In that case a man earning 36*s*. a week received a weekly payment of 18*s*. It was subsequently proved that he was earning 10*s*. a week by boot-repairing and selling newspapers. The arbitrator declined to reduce the weekly payment, and the Court of Appeal refused to disturb his decision.

Loss of incidental advantages not to be regarded.

It should be observed that this difference is the difference between the *actual* earnings before the accident and the *potential* earnings at the time the compensation is fixed, and that this is *the only consideration* to which the arbitrator can have regard. He may not take into account

* In *Pomphrey* v. *The Southwark Press*, as reported in the *Law Reports*, [1901] 1 K. B. on p. 91, COLLINS, L.J., is reported to have said: "I take it to be clearly settled that the maximum amount which the injured workman can claim is to be measured by the difference between his earnings before the accident and what he can earn after it. *The maximum that can be awarded is one half the difference so ascertained.*" The Lord Justice is here misreported. What he actually said is accurately given in the *Law Times Reports*, 83 L. T. 468. "The fund out of which that compensation is payable is one half of the average weekly earnings before the accident." The mistake has now been corrected. See *Law Reports*, [1902] 1 K.B. on p. 61. The matter was considered by the Court of Appeal in a case in which a learned County Court Judge had felt bound to follow this very explicit *dictum*. COLLINS, M.R., there repudiated the words attributed to him, and the case was sent back to be re-heard (*Jones* v. *L. & N. W. Ry. Co.*, not reported; heard by the Court of Appeal, Nov. 8th, 1901).

The matter is now placed beyond all doubt, but the result is certainly curious. "A man who is totally incapacitated can only be compensated to the extent of half his loss. A man, who is only partially incapacitated, may be awarded the whole difference between his wages before and his wages after the accident, and may thus be compensated twice as liberally as a man much more severely injured."

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Sched. I., Para. 2 (*contd.*).

such a circumstance as a chance of promotion, or the probability that the man would have been able to earn more at the time of the award but for the accident, or the fact that he has lost the benefit of his tuition as an apprentice, or some other incidental advantage not capable of pecuniary estimate. (See note on word EARNINGS, on p. 75.) *Pomphrey* v. *The Southwark Press*, [1901] 1 K. B. 86; 70 L. J. K. B. 48. *Per* STIRLING, L.J.: "The sole elements which are to be taken into consideration . . . are the average weekly earnings before the accident and the average amount which the workman can earn after the accident." (The Scotch case, *Freeland* v. *Macfarlane, Lang & Co.*, (1900) 37 S. L. R. 599, is in conflict with this decision, and should not be followed.)

Declaration of liability where earnings not affected.

Where there is no difference between the amounts received as wages before and after the accident, the arbitrator has no jurisdiction to award the workman any compensation at all. This is so whether the amount received after the accident is actually earned by the workman, or whether the employer, as a matter of grace, chooses to pay him more than his market value. The proper course for the arbitrator to adopt in such a case is to make a declaration of the liability of the employer to compensate the workman under the initial words of s. 1, sub-s. 3, of the Act, and to postpone the assessment of the compensation until such time as the results of the accident actually affect the workman's earning capacity. (*Chandler* v. *Smith*, [1899] 2 Q. B. 506; 68 L. J. Q. B. 909.) The Court of Appeal (see the judgment of VAUGHAN WILLIAMS, L.J.) indicated their opinion that this course was preferable to that adopted in the earlier case of *Irons* v. *Davies & Timmins*, [1899] 2 Q. B. 330; 68 L. J. Q. B. 673, where, by consent, the weekly payment was fixed at 1*d.* a week.

Where, however, an award has actually been made and the question is considered on an application for review, the proper course seems to be to reduce the amount awarded to 1*d.* a week, as this keeps alive the workman's right to apply for a further review in the event of a change of circumstances. (See *Pomphrey* v. *The Southwark Press*, [1901] 1 K. B. 86; 70 L. J. K. B. 48, and notes on paragraph 12 of the schedule on p. 93.)

So also, if the workman's claim is in respect of arrears of compensation due to him, but at the time of the award, though still suffering from the effects of the injury, he has resumed work at his old wages, the proper course seems to be to award him compensation in full to the date of his resumption of work, and at 1*d.* a week from that time onward, so as to keep alive his rights, in the event of his being again incapacitated by his injuries.

"**Earnings.**"—See note on paragraph 1 (*a*) (i.) on p. 75.

Offers of work by employer.

"**The Average Amount which he is able to Earn.**"—The best evidence of a man's earning capacity is a definite offer of work by the employer. But the employer is not bound to make such an offer. If he can prove the man's earning capacity in any other way, he may do so. Similarly the workman is not bound to accept the employer's offer. If he can prove a loss of earning capacity, he is entitled to an award in respect of that loss.

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Sched. I., Para. 2 *(contd.)*.

SCOTCH CASE.—The question was very fully considered in the Scotch case of *G. N. of Scotland Ry. Co.* v. *Fraser*, (1901) 38 S. L. R. 683. The principles there laid down were as follows: An offer of employment may be some evidence of a man's earning capacity (which is one of the points to be determined in estimating the measure of his compensation), but it is not so in every case (as, *e.g.* where it is avowedly offered out of charity), and it is not necessarily conclusive in any case. The man is not bound to accept it. If he can prove a diminution of earning capacity as compared with his old average earnings, an arbitrator (subject to the limits imposed by the Act) may award him compensation to the extent of that diminution.

Cf. the case of *Ellis* v. *Knott* (the *Times* newspaper, April 9th, 1900), the facts of which are given on p. 85. In that case the offer by an employer to a man, whose fingers had been injured by a circular saw, of his old work, at his old wages, accompanied by an undertaking to "make things easy for him," was held no ground for reducing the weekly payment. *Per* COLLINS, L.J.: "The finding of the judge was that the man was no longer capable of earning the same wages at the same work at which he was employed before the accident. That work was upon the evidence the only work at which he could as a mechanic earn wages of that amount. Having lost one of his fingers, and two other fingers being injured, the man was not fit to work at the circular saw. That was the only work offered him by the appellant. The finding of the judge was therefore a finding that the man's earning capacity had been diminished."

Medical examination of workman at employer's request.

(3.) Where a workman has given notice of an accident, he shall, if so required by the employer, submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, and if he refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation, and any proceeding under this Act in relation to compensation, shall be suspended until such examination takes place.

"**Where a Workman has given Notice of an Accident.**"—See s. 2, sub-s. 1. The notice prescribed by that section is for the benefit of the employer, and may be waived by him. The workman is not entitled to plead his own failure to give such notice, in order to relieve himself from the obligations imposed upon him by this paragraph. In *Osborn* v. *Vicars, Son, & Maxim*, [1900] 2 Q. B. 91; 69 L. J. Q. B. 606, a workman, without giving any notice of accident, filed a request for arbitration. The employers in their answer did not plead the absence of notice. They then called upon the workman to submit himself for examination under the above paragraph, and, on his refusing to do so, applied to the arbitrator for an order staying further proceedings. The workman objected that, not

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Sched. I., Para. 3 (*contd.*).

having given notice of accident, he was not within the above paragraph. *Held*, that he was not entitled to raise the objection.

"**Shall be Suspended.**"—These words are imperative, and an arbitrator to whom an application is made for an order to stay proceedings in such a case, has no power to attach conditions to the granting of such order. (*Osborn* v. *Vicars, Son, & Maxim*, supra.)

For the procedure by which an employer can secure a suspension of all proceedings in the arbitration, see Workmen's Compensation Rules, 50, p. 137; and Form 24, p. 166.

To whom payment made in case of death.

(4.) The payment shall, in case of death, be made to the legal personal representative of the workman, or, if he has no legal personal representative, to or for the benefit of his dependants, or, if he leaves no dependants, to the person to whom the expenses are due; and, if made to the legal personal representative, shall be paid by him to or for the benefit of the dependants or other person entitled thereto under this Act.

"**The Payment shall . . . be made to the Legal Personal Representative.**"—Paragraphs 4, 5, 6, and 7 of this schedule must be read closely together, and these words are subject to the powers of ordering investment conferred upon the arbitrator by paragraphs 6 and 7. It is not therefore obligatory upon an arbitrator who, in case of death, has allotted a sum as compensation to dependants, to order that sum to be paid to the personal representative of the deceased workman. He may, if he pleases, order it to be paid into Court, and invested under his directions by the registrar. (*Daniel* v. *The Ocean Coal Co.*, [1900] 2 Q. B. 250; 69 L. J. Q. B. 567.)

"**To or for the Benefit of his Dependants.**"—See note on paragraph 1, (*a*), (ii.), p. 82.

For definition of "dependants," see s. 7, sub-s. 2, of the Act, p. 67.

The personal representative does not, however, receive the money as part of the workman's general estate. His creditors, if he has left any, cannot claim that it shall be applied in satisfaction of their debts. The personal representative holds it on behalf of the dependants as trustee under the statute. (See *per* VAUGHAN WILLIAMS, L.J., in *Daniel* v. *Ocean Coal Co.*, (1900), as reported in 16 T. L. R. 368.)

If the workman has died intestate, it does not seem to be obligatory upon any one to take out letters of administration in order to obtain compensation. If no letters of administration have, as a matter of fact, been taken out, the application may be made by the dependants themselves. (See Rule 4 (2), *post*, p. 112); but, in such a case, the judge or arbitrator should see that all the dependants are joined as

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applicants. The point is not, however, vital to the award. See *Beavan* v. *Crawshay Bros.*, (1902) 18 T. L. R. 17.

Sched. I., Para. 4 (*contd.*).

"**Or other Person entitled thereto under this Act,**"—*i.e.* the medical attendant and undertaker or the person who has paid their charges.

(5). Any question as to who is a dependant, or as to the amount payable to each dependant, shall, in default of agreement, be settled by arbitration under this Act.

Questions as to dependency to be settled by arbitration.

See Rule 5, p. 112; Form 3, p. 150.

(6.) The sum allotted as compensation to a dependant may be invested or otherwise applied for the benefit of the person entitled thereto, as agreed, or as ordered by the committee or other arbitrator.

Application of sum awarded.

"**May be invested.**"—These words apply to all cases in which compensation is allotted to a dependant by the arbitrator, and are not confined to cases where there is no legal personal representative of the deceased workman. They must be read as qualifying the words of paragraph 4, which declares that "the payment shall, in case of death, be made to the legal personal representative of the workman." (*Daniel* v. *The Ocean Coal Co.*, [1900] 2 Q. B. 250; 69 L. J. Q. B. 567. See note on paragraph 4 of this schedule.)

"**As agreed.**"—These words probably mean, "as agreed between the dependants themselves," or "between the dependants and the legal personal representative of the deceased workman," and not "as agreed between the dependants and the employer," or "between the legal personal representative and the employer." The employer is not regarded as having any interest in the apportionment or the disposal of the compensation money. In *Daniel* v. *The Ocean Coal Co.* (*supra*), the employers appeared in the Court of Appeal to support the order of the arbitrator, but though the order was upheld, the employers' costs were not allowed.*

(7.) Any sum which is agreed or is ordered by the committee or arbitrator to be invested may be invested in

Investment in Savings Bank.

* If an employer desires to see that the interests of the children of a workman lately in his employment are properly secured, and if the workman's legal personal representative refuses to agree to some scheme by which the money may be invested for their benefit, his best course is to file a request for arbitration himself under Rule 10*a*, or if a request has already been filed, to file an answer submitting the point to the notice of the arbitrator. In such a case the arbitrator would no doubt not order him to pay the costs of the other side, but, in view of the above decision, it is doubtful whether the arbitrator has any power to order the workman's legal personal representative to pay the costs of the employer.

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Sched. I., Para. 7 (*contd.*).

whole or in part in the Post Office Savings Bank by the registrar of the county court in his name as registrar.

See Rule 59, p. 149.

(8.) Any sum to be so invested may be invested in the purchase of an annuity from the National Debt Commissioners through the Post Office Savings Bank, or be accepted by the Postmaster-General as a deposit in the name of the registrar as such, and the provisions of any statute or regulations respecting the limits of deposits in savings bank, and the declaration to be made by a depositor, shall not apply to such sums.

(9.) No part of any money invested in the name of the registrar of any county court in the Post Office Savings Bank under this Act shall be paid out, except upon authority addressed to the Postmaster-General by the Treasury or by the judge of the county court.

(10.) Any person deriving any benefit from any moneys invested in a Post Office Savings Bank under the provisions of this Act may, nevertheless, open an account in a Post Office Savings Bank or in any other savings bank in his own name without being liable to any penalties imposed by any statute or regulations in respect of the opening of accounts in two savings banks, or of two accounts in the same savings bank.

Workman receiving weekly payments may be medically examined when employer so wishes.

(11.) Any workman receiving weekly payments under this Act shall, if so required by the employer, or by any person by whom the employer is entitled under this Act to be indemnified, from time to time submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, or such other person; but if the workman objects to an examination by that medical practitioner, or is dissatisfied by the certificate of such practitioner upon his condition when communicated to him, he may submit himself for examination to one of the medical practitioners appointed for the purposes of this Act, as mentioned in the Second Schedule to this Act,

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and the certificate of that medical practitioner as to the condition of the workman at the time of the examination shall be given to the employer and workman, and shall be conclusive evidence of that condition. If the workman refuses to submit himself to such examination, or in any way obstructs the same, his right to such weekly payments shall be suspended until such examination has taken place.

See Rule 50, p. 137, and note on paragraph 3 of this schedule, p. 87.

"**Any Workman receiving Weekly Payments under this Act.**"—Workmen receiving weekly payments under an award, or under a certificate (see s. 1, sub-s. 4), or under a memorandum recorded (see sched. ii., par. 8), are, of course, within these words. It is by no means clear, however, that they extend to workmen receiving weekly payments under an agreement of which no memorandum has been recorded, or to workmen receiving weekly payments from their employers without any agreement, but simply in recognition of the employers' liability under the Act. Reading the paragraph in connection with Rule 50 (which provides the machinery for enforcing it), it would seem that such workmen are outside its scope. In most cases they may be called upon by their employers to submit themselves to examination under paragraph 3 of this schedule, but if this interpretation is the correct one, they would seem to have no right to appeal to the medical referee.

"**Any Person by whom the Employer is entitled under this Act to be indemnified.**"—See ss. 4 and 6, and notes thereon, pp. 22 and 32.

"**May submit himself.**"—These words are, no doubt, in form merely permissive, but they must be read in conjunction with the last sentence of the paragraph, which provides that if the workman refuses so to submit himself, his right to his weekly payments shall be suspended. See note below, on the words, "REFUSES TO SUBMIT HIMSELF TO SUCH EXAMINATION."

"**One of the Medical Practitioners appointed for the Purposes of this Act.**"—See sched. ii., par. 13, and Rules as to Medical Referees, Appendix B.

It should be noted that the Rules as to Medical Referees apparently do not provide any machinery for enabling workmen to avail themselves of the provisions of this paragraph.*

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* Medical referees under the Act have two distinct functions. The first is to report to any committee, arbitrator, or judge, on "any matter which seems material to any question arising in the arbitration" (sch. ii., par. 13, *post*). The second is to examine workmen who submit themselves under the provisions of this paragraph. The Rules as to Medical Referees seem to deal only with the first of these functions, and are not applicable to the simple case of a workman who desires to be examined by the medical referee instead of, or by way of appeal from, the medical practitioner provided and paid by the employer (see, in particular, Rules 1, 2, and 15). It is submitted that the medical referee must examine such a workman, if he submits himself, and is not entitled under Rule 15 of the Rules as to Medical Referees to

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Sched. I, Para. 11 (*contd.*).

"**Shall be Conclusive Evidence.**"—SCOTCH CASE.—In *Boase Spinning Co.* v. *McAvan*, (1901) 38 S. L. R. 772, a medical referee's certificate reported that a workman had recovered from his injuries and was fit for light work; that he would probably never be fit for hard manual labour again, but that this disability was due not to the effects of the accident, but to defective vigour and advancing years. *Held* (*dissentiente* LORD YOUNG), that this certificate was conclusive not only as to the condition of the workman, but also as to the causes of that condition.

"**If the Workman refuses to submit himself to such Examination,**"—*i.e.* to the examination by the medical referee. The employer has thus the right to call upon the workman to submit himself to this examination, but there is no provision compelling the employer to pay the expenses so incurred. They may, however, be allowed as part of the costs in any subsequent arbitration. See Rule 33 (4), p. 130.

"**Shall be suspended.**"—It would seem from Rule 50, p. 137, that these weekly payments can only be suspended by order of the County Court Judge, upon application made by the employer, and proof of the refusal or obstruction alleged.

The Judge has no power on such application to order the costs of the medical examination to be paid by the employer, or to impose any other condition upon the order suspending the weekly payments. (*Osborn* v. *Vicars, Son, & Maxim*, [1900] 2 Q. B. 91; 69 L. J. Q. B. 606.)

Weekly payments may be reviewed.

(12.) Any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review may be ended, diminished, or increased, subject to the maximum above provided, and the amount of payment shall, in default of agreement, be settled by arbitration under this Act.

(See Form 5, Appendix A.)

"**May be reviewed.**"—An arbitrator under this section has no jurisdiction to hear an application which is in effect an appeal from his own decision. The paragraph only applies where there has been some change of circumstances, as where the workman has got well, or better, or worse, or presumably where he has become, for some other reason, able to earn less or more wages. (*Crossfield & Sons* v. *Tanian*, (1900) 16 T. L. R. 476.) It was held by the Court of Appeal in a case not reported (*Graig Brick Co.* v. *Williams*, Nov. 13th, 1901), that a definite offer of work

require a signed and sealed reference. No fee is prescribed for such examination. It may be presumed, therefore, that the medical referee is entitled to charge a reasonable fee. This fee must, apparently, in the first instance be paid by the workman, but if the certificate given by the medical referee is used in any subsequent arbitration, it may (together with any reasonable travelling and other expenses), by order of the judge or arbitrator, be allowed as costs in the arbitration. See Rule 33 (4), p. 130.

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made by the employer was such a "change of circumstances" as to entitle him to apply for a review of a weekly payment awarded, although there had been no change in the workman's condition since the award.

Review of weekly payments (contd.).

Review by Act of the Parties.—The review may take place by the act of the parties themselves, and when once a weekly payment has been so reviewed and terminated, a fresh claim cannot be made, and the original agreement under which the weekly payments were made cannot be recorded. See *Bradbury* v. *The Bedworth Coal & Iron Co.* (the *Times* newspaper, March 17th, 1900). In that case a man sustained an injury to his eye and received a weekly payment under an agreement. He subsequently went back to work at his old rate of wages. A few weeks afterwards, the part of the colliery where he worked was abandoned, and he was dismissed. Soon after, his eye gave him trouble again, and he made a fresh claim for compensation. *Held*, that it was not competent for him to do so, as the weekly payment had been "reviewed and ended by mutual consent" within the meaning of this paragraph.

"**May be Ended, Diminished, or Increased.**"—The principles on which the arbitrator must act in exercising the powers conferred upon him by this paragraph are clearly explained in *Pomphrey* v. *The Southwark Press*, [1901] 1 K. B. 86; 70 L. J. K. B. 48. The maximum which the workman is at any time entitled to receive is the difference between the amount of his average weekly earnings before the accident (the basis of the original award, or agreement), and the amount he is able to earn at the time of the review. See paragraph 2 of this schedule and notes thereon, on pp. 84–87.

If it is proved that the workman has wholly recovered from the effects of the accident, the arbitrator should terminate the weekly payment altogether. If the employer proves that the workman is able to earn his old wages, but the workman satisfies the arbitrator that in spite of this fact he is still suffering from the effects of the accident, the arbitrator should reduce the amount of the weekly payment to 1*d.* a week. This will keep alive the workman's right to apply for a further review, in the event of the effects of the accident making themselves more severely felt at a future date.

In *Pomphrey* v. *The Southwark Press*, [1901] 1 K. B. 86; 70 L. J. K. B. 48, an apprentice, earning an average wage of 7*s.* a week, sustained an injury to his right hand, which would prevent him for the rest of his life from working as a skilled artisan. Compensation was awarded him at 3*s.* 6*d.* a week. He subsequently accepted work from his employers as a labourer at 11*s.* 2*d.* a week. *Held*, that these facts entitled the employers to a review of the weekly payment, which was accordingly reduced to 1*d.* a week.

In *Powell Duffryn Steam Coal Co.* v. *Edwards* (the *Times* newspaper, July 23rd, 1900), a collier lad lost part of his leg by an accident, and was awarded a weekly payment of 10*s.* a week. He then apprenticed himself to a shoemaker. The employers thereupon offered him work in the

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Sched. I., Para. 12 (*contd.*).

Review of weekly payments (contd.).

lamp-room at his old rate of wages. The work was work which he was able to do, and the wages were the usual wages for the work offered. The offer was declined. The arbitrator on these facts terminated the weekly payment, but made a "declaration of liability" in the terms suggested in *Chandler* v. *Smith*, [1899] 2 Q. B. 506; 68 L. J. Q. B. 909, so as to keep alive his rights under the award. On an appeal the arbitrator's decision was upheld, the employers undertaking not to object to a further review in the event of circumstances changing.

In *Ellis* v. *Knott* (the *Times* newspaper, April 9th, 1900), a workman employed as a machinist, and earning 36*s*: a week, had one of his fingers cut off and two others injured by a circular saw. By an agreement duly recorded he received a weekly payment of 18*s*. a week. The employer subsequently offered to take the man back at his old work, "make things easy for him," and pay him his full wages, but the offer was refused. The work was not such as the man could effectively perform in his injured condition. On an application for review, the arbitrator held that the man's earning capacity had been diminished, and declined to reduce the weekly payment. His decision was upheld by the Court of Appeal. An offer of employment which a man cannot effectively undertake, and made out of charity, is thus not a sufficient ground for the reduction of a weekly payment. See note on paragraph 2 of this schedule, p. 86.

"**At the Request . . . of the Employer.**"—Insurers against whom an order is made under s. 5 of the Act have the same rights in regard to the review of weekly payments as the employer. See Rule 55, p. 139.

"**In Default of Agreement.**"—See note on words, "IF NOT SETTLED BY AGREEMENT," s. 1, sub-s. 3, p. 14.

Redemption of weekly payments by payment of lump sum.

(13.) Where any weekly payment has been continued for not less than six months, the liability therefor may, on the application by or on behalf of the employer, be redeemed by the payment of a lump sum, to be settled, in default of agreement, by arbitration under this Act, and such lump sum may be ordered by the committee or arbitrator to be invested or otherwise applied as above mentioned.

"**On the Application by or on behalf of the Employer.**"—The right to apply for the redemption of a weekly payment is confined to the employer. No such right is given to the workman.

Insurers, against whom an order is made under s. 5 of the Act, have the same rights in this respect as the employer. See Rule 55, p. 139.

"**A Lump Sum.**"—The arbitrator has absolute discretion as to the amount of this sum.* He may capitalize the payment on any principle

* In the first draft of the Bill this lump sum was restricted to 312 times the weekly payment, and the right of applying for redemption was given to both

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he pleases, and is not bound to proceed on any actuarial basis. In cases, therefore, where a workman has, after an accident, been taken back by the employer at reduced wages, and has, under an award or agreement, become entitled to a weekly payment representing the whole or part of the difference between his earnings before and his earnings after the accident, the arbitrator *may* (and it is submitted, *should*) take into account the whole of the circumstances of the workman's position in relation to his employer, and need not restrict the sum awarded to an actuarial commutation of this difference.

Sched. I., Para. 13 (*contd.*).

"**To be settled . . . by Arbitration.**"—See Form 5, Appendix A.

"**May be ordered to be Invested.**"—See Rule 59, p. 141.

(14.) A weekly payment, or a sum paid by way of redemption thereof, shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the same.

No assignment of sums awarded.

Cf. sched. ii., par. 12.

(15.) Where a scheme certified under this Act provides for payment of compensation by a friendly society, the provisions of the proviso to the first sub-section of section eight, section sixteen, and section forty-one of the Friendly Societies Act, 1896, shall not apply to such society in respect of such scheme.

59 & 60 Vict. c. 25.

(16.) In the application of this schedule to Scotland the expression "registrar of the county court" means "sheriff clerk of the county," and "judge of the county court" means "sheriff."

(17.) In the application of this Act to Ireland the provisions of the County Officers and Courts (Ireland) Act, 1877, with respect to money deposited in the Post Office Savings Bank under that Act, shall apply to money invested in the Post Office Savings Bank under this Act.

40 & 41 Vict. c. 56.

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employer and workman. The House of Lords removed this restriction on the amount, and at the same time confined the right of applying for redemption to the employer.

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SECOND SCHEDULE.

ARBITRATION.

Sched. II., Para. 1.

The following provisions shall apply for settling any matter which under this Act is to be settled by arbitration:—

Procedure where representative committee exists.

(1.) If any committee, representative of an employer and his workmen, exists with power to settle matters under this Act in the case of the employer and workmen, the matter shall, unless either party objects, by notice in writing sent to the other party before the committee meet to consider the matter, be settled by the arbitration of such committee, or be referred by them in their discretion to arbitration as herein-after provided.

"**Committee.**"—No rules of procedure are prescribed for such a committee. It must be presumed, therefore, that each committee is left to frame its own rules. Paragraphs 4, 5, 6, 8, 12, and 13 of this schedule, however, seem to be applicable to an arbitration by a committee quite as much as to an arbitration by a County Court Judge, or an agreed or appointed arbitrator. If this is so, the proceedings of the committee would to this extent be governed by the rules framed to carry out these paragraphs.

Procedure where reference to committee objected to.

(2.) If either party so objects, or there is no such committee, or the committee so refers the matter or fails to settle the matter within three months from the date of the claim, the matter shall be settled by a single arbitrator agreed on by the parties, or in the absence of agreement by the county court judge, according to the procedure prescribed by rules of court, or if in England the Lord Chancellor so authorises, according to the like procedure, by a single arbitrator appointed by such county court judge.

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Sched. II., Para. 2 (*contd.*).

"**The Claim,**"—*i.e.* the claim made by the workman (or his dependants) upon the employer, not the claim made to the committee. (See *Powell* v. *The Main Colliery Co.*, [1900] A. C. 366; 69 L. J. Q. B. 758.)

The committee has thus an irregular interval in which to settle the claim, the three months dating, not from the time when it is brought to their notice, but from the time when it is formally addressed by one party to the other. If the claim is not brought before the committee until after the expiration of the three months, it would seem that they have no jurisdiction to hear the matter, though in such a case it is difficult to see how they can be said to have "failed to settle" the claim.

(3.) Any arbitrator appointed by the county court judge shall, for the purposes of this Act, have all the powers of a county court judge, and shall be paid out of moneys to be provided by Parliament in accordance with regulations to be made by the Treasury.*

52 & 53 Vict. c. 49.

Powers of arbitrator.

(4.) The Arbitration Act, 1889, shall not apply to any arbitration under this Act; but an arbitrator may, if he thinks fit, submit any question of law for the decision of the county court judge, and the decision of the judge on any question of law, either on such submission, or in any case where he himself settles the matter under this Act, shall be final, unless within the time and in accordance with the conditions prescribed by rules of the Supreme Court either party appeals to the Court of Appeal; and the county court judge, or the arbitrator appointed by him, shall, for the purpose of an arbitration under this Act, have the same powers of procuring the attendance of witnesses and the production of documents as if the claim for compensation had been made by plaint in the county court.

"**Submit any Question of Law**": but not a question of fact (*Ferguson* v. *Green*, [1901] 1 K. B. 25; 71 L. J. K. B. 21).

No power to grant new trial.

"**The Decision of the Judge . . . shall be final.**"—It was decided in *Mountain* v. *Parr*, [1899] 1 Q. B. 805; 68 L. J. Q. B. 447, that a County Court Judge sitting as arbitrator under this Act has no power to grant a new trial. (See note on Rule 64, p. 144.) The actual decision in

* No Treasury Regulations have been published under this paragraph, but in practice the Treasury prescribe four guineas a day as the rate of payment.

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Sched. II., Para. 4 (*contd.*).

Mountain v. *Parr* referred to the question of a new trial on a point of law under s. 93 of the County Courts Act, 1888 (51 & 52 Vict. c. 43), but the reasoning of the judgment is equally applicable to the question of a new trial under s. 91 of the same Act, where a defendant fails to appear. If, therefore, after due notice, a respondent under this Act fails to appear, the Act provides no machinery by which the case may be re-heard. (See next note, and also note on paragraph 12 of the First Schedule.)

An arbitrator has no power to vary or alter his award when once drawn up, provided that it correctly expresses the meaning of his decision, even though that decision was given under a mistake, or was the effect of misrepresentation. (*Re Suffield & Watts*, (1888) 20 Q. B. D. 693; *Preston Banking Co.* v. *Allsup*, [1895] 1 Ch. 141; 64 L. J. Ch. 196.) He may, however, under Rule 26 (2), "correct any clerical mistake or error in such award arising from any accidental slip or omission." (See Rule 26, *post*, p. 125, and cases there cited.) It would seem, too, that he has power to vary or alter his award with the consent of all parties. (*Ainsworth* v. *Wilding*, [1896] 1 Ch. 677; 65 L. J. Ch. 432.)

Although an arbitrator has no power to vary his original award, he has jurisdiction to entertain a subsequent claim by the dependants of a workman who has died from injuries in respect of which he had, under such award, been previously receiving weekly payments. (*O'Keefe* v. *Lovatt*, (1902) 18 T. L. R. 57.)

Right of Arbitrator to Proceed ex parte.—It would seem to result from *Mountain* v. *Parr*, [1899] 1 Q. B. 805; 68 L. J. Q. B. 447, that s. 91 of the County Courts Act, 1888 (which provides that a judge may proceed with a trial in the absence of the defendant), does not apply to arbitrations under this Act. At common law, however, an arbitrator, if he has served a peremptory notice fixing time and place, has always power to proceed in the absence of either party.

If an arbitrator proceeds with the arbitration, and makes his award in the absence of either party without such peremptory notice, the award may be set aside. (*Gladwin* v. *Chilcote*, (1842) 5 Jur. 749.) See Russell, on "Arbitrations and Awards," 8th edit., p. 139. The form of notice under this Act, where the arbitrator is a County Court Judge, is prescribed by Rule 14, p. 116, and Form 7, Appendix A.

It has been decided in Scotland (*United Collieries* v. *Gavin*, (1899) 37 S. L. R. 47) that, if a respondent fails to appear, it is the duty of the arbitrator not to give judgment by default for the amount claimed, but to examine into the circumstances of the case, and to make such order as he thinks to be just. "It is quite in the spirit of the Workmen's Compensation Act that one of the parties should place such confidence in the good sense and knowledge of the sheriff that he should take no part in the proceedings, but leave the sheriff to ascertain the facts for himself" (*per* the LORD JUSTICE CLERK).

"**In any Case where he himself Settles the Matter.**"—The introductory

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words of the schedule ("The following provisions shall apply for settling any matter which under this Act is to be settled by arbitration") seem to confine the application of its provisions to cases of arbitration. These cases are enumerated as follows in the Scotch case of *Cochrane* v. *Traill & Sons* (No. 2), (1900) 38 S. L. R. 18.

Sched. II., Para. 4 (*contd.*).

What matters are to be settled by arbitration.

1. Liability.
2. Amount.
3. Duration.
4. Dependency.
5. Apportionment between dependants.
6. Review.
7. Redemption.

Held, in the above case, that the provisions of the schedule did not apply to an application to record a memorandum. See next note.

Appeals from arbitrator.

"**Appeals to the Court of Appeal.**"—An appeal lies to the Court of Appeal from an interlocutory order made by an arbitrator, as, for instance, an order staying proceedings under paragraph 3 of the First Schedule. (*Osborn* v. *Vicars, Son, & Maxim*, [1900] 2 Q. B. 91; 69 L. J. Q. B. 606.)

If, however, what is sought is an order in the nature of a *mandamus* to the County Court Judge to do his duty, the proper course is to apply to the Divisional Court, under s. 131 of the County Court Act, 1888 (51 & 52 Vict. c. 43). (*Welland* v. *The Great Western Railway Co.*, (1900) 16 T. L. R. 297.)

Only matters which are to be settled by arbitration come within the provisions of this schedule, and therefore it is only in such cases that an appeal lies to the Court of Appeal. In *Leech* v. *Life and Health Assurance Association*, [1901] 1 K. B. 707; 70 L. J. K. B. 544, it was accordingly held that no such appeal lay against the refusal of an arbitrator to make an order against insurers under s. 5 of the Act. (Cf. *Welland* v. *The Great Western Railway Co., supra.*) *Per* COLLINS, M.R.: "It is not a matter which has relation to the settling of the liability to, and the amount of, compensation, but an ancillary matter which relates to securing the amount of the compensation when settled by the award." It would seem that an appeal to the Court of Appeal lies against the consent or refusal of a judge to assess compensation under s. 1, sub-s. 4, of the Act, since the judge becomes an arbitrator as soon as the application to assess is made. (See the case of *Hoddinott* v. *Newton, Chambers & Co.*, [1901] A. C. 49. Note particularly the *dictum* of LORD SHAND, on p. 59.)

Although the point has not been expressly decided, it is presumed that in all matters under the Act *other* than those to be settled by arbitration, appeals would lie (where at all) to the Divisional Court under s. 120 of the County Courts Act, 1888.

As to SECURITY FOR COSTS on appeal, see note on Rule 36, p. 132.

Appeal to the House of Lords.—An appeal lies from a decision of the Court of Appeal under this Act to the House of Lords without leave

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Sched. II., Para. 4 (contd.).

—but, as far as Scotland is concerned, the use of the word "finally" in paragraph 14 (c) of the Second Schedule debars an appeal to the House of Lords from the Court of Session. (*Osborne* v. *Barclay, Curle & Co.*, [1901] A. C. 169; 38 S. L. R. 611 (*sub. nom. M'Kinnon* v. *Barclay, Curle & Co.*), and see notes on paragraph 14, *post*, p. 106.)

Powers of agreed arbitrator.

Powers of Agreed Arbitrator.—As the Arbitration Act, 1889, does not apply to arbitrations under this Act, and as it is only to the County Court Judge and his appointed arbitrator that powers are given by this paragraph to procure the attendance of witnesses and production of documents, it would seem that no such powers are attached to an arbitrator agreed upon by the parties under paragraph 2 of this schedule.

He has power, however, to administer oaths. By 14 & 15 Vict. c. 99, s. 16, "Every court, judge, justice, officer, commissioner, arbitrator, or other person, now or hereafter having by law or by consent of parties authority to hear, receive, and examine evidence, is hereby empowered to administer an oath to all such witnesses as are legally called before them respectively."

(5.) Rules of court may make provision for the appearance in any arbitration under this Act of any party by some other person.

See Rule 32, *post*, p. 128.

Costs to be in discretion of arbitrator.

(6.) The costs of and incident to the arbitration and proceedings connected therewith shall be in the discretion of the arbitrator. The costs, whether before an arbitrator or in the county court, shall not exceed the limit prescribed by rules of court, and shall be taxed in manner prescribed by those rules.

See Rules 33 and 34, *post*, pp. 128–130.

In *Welland* v. *The Great Western Railway Co.*, (1900) 16 T. L. R. 297, a judge was held justified, under r. 33 (3) in fixing the costs at £5, on the ground that the workman ought to have accepted an offer made by the employers.

As to costs where an application is successfully made under s. 1, sub-s. 4, after the failure of proceedings taken "independently of the Act," see *Cattermole* v. *Atlantic Transport Co.*, [1902] 1 K. B. 204; 71 L. J. K. B. 173, cited *ante*, p. 15.

The provisions of this paragraph apply to proceedings instituted for the registration of a memorandum or the rectification of the register under paragraph 8 of this schedule. See Rule 45 (e), *post*, p. 134.

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(7.) In the case of the death or refusal or inability to act of an arbitrator, a Judge of the High Court at Chambers may, on the application of any party, appoint a new arbitrator.

Sched. II., Para. 7

Appointing new arbitrator.

See O. LIV., r. 1 A. of Rules of the Supreme Court, 1898—"3. An application for the appointment of a new arbitrator under paragraph 7 of the Second Schedule of the Workmen's Compensation Act, 1897, shall be by summons."

See, also, Rule 27 (*e*), *post*, p. 126.

(8.) Where the amount of compensation under this Act shall have been ascertained, or any weekly payment varied, or any other matter decided, under this Act, either by a committee or by an arbitrator or by agreement, a memorandum thereof shall be sent, in manner prescribed by rules of court, by the said committee or arbitrator, or by any party interested, to the registrar of the county court for the district in which any person entitled to such compensation resides, who shall, subject to such rules, on being satisfied as to its genuineness, record such memorandum in a special register without fee, and thereupon the said memorandum shall for all purposes be enforceable as a county court judgment. Provided that the county court judge may at any time rectify such register.

Memorandum of award or agreement to be recorded.

See Rules 38–45, *post*, pp. 133, 134.

"**Decided . . . by Agreement.**"—The agreement need not be in writing. It may be implied from the circumstances. Where an employer, making the full weekly payments recoverable under the Act, and not denying liability, sent a memorandum of agreement to the registrar, who declined to record it on the ground that the workman refused to sign it, the Court of Appeal considered that the facts of the employer paying the full amount for which he could be liable and not denying liability, and of the man accepting such payments, constituted evidence of an implied agreement, which the registrar should have recorded under this paragraph. *Held*, that under these circumstances the arbitrator had no jurisdiction to hear the claim, no "question" having arisen within the meaning of s. 1, sub-s. 3 (see note), *ante*, p. 13. (*Jones* v. *Great Central Railway Co.*, (1901) 18 T. L. R. 65.)

What constitutes an "agreement."

It is a little difficult to reconcile with this decision the *dictum* of COLLINS, M.R., in the immediately preceding case of *Field* v. *Longden*,

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Sched. II., Para. 8 (*contd.*).

[1902] 1 K. B. 47, *ante*, p. 13. "If one of the parties told the other that he proposed to send in a memorandum of agreement to the Registrar, and the other objected that he was not entitled to do so, then, no doubt, there would be a question in dispute between them" (as reported in 18 T. L. R., p. 65). Doubtless it is only where something less than the full amount which may be claimed is being paid, or where some condition outside the provisions of the Act is attached to such payments, that this *dictum* would apply. (See notes on s. 1, sub-s. 3, *ante*, p. 13.)

SCOTCH CASE.—In *Cochrane* v. *Traill & Sons* (No. 3), (1901) S. L. R. 848, it was held that a memorandum of a verbal agreement might be recorded.

"**Shall be sent.**"—These words, as far as the committee or arbitrator are concerned, are imperative. As to "any person interested," they would seem to be permissive. It may be doubted, however, inasmuch as the Act has provided this method of enforcing these agreements, whether, if they are not recorded, they can be enforced in any other way. It may also be doubted whether a weekly payment made under an unrecorded agreement is a "weekly payment under this Act," within the meaning of paragraph 1 (*a*), (1.), and paragraphs 11–13 of the First Schedule (see notes *ad. loc.*).

Effect of recording a memorandum.

The practical effect of recording a memorandum of an agreement is that, when once it is recorded, the employer cannot reduce or terminate the payments, without first applying to the Court and obtaining an order under paragraph 12 of the First Schedule. If the workman receiving weekly payments does not take the precaution to obtain and record a definite agreement, and the employer thinks at any time that the workman is able to resume work, he can at once suspend all further payments, and leave the workman to institute proceedings, in which he will have to support the burden of proof. If the payments in question have been made in pursuance of an agreement, the workman may then apply to have the agreement recorded. If they have been made without any agreement, he must file an ordinary request for arbitration, and in that case, unless the payments have been made under such circumstances as to amount to an admission of liability, the employer has all the ordinary defences open to him.

Time within which Application must be made.—As an application under this paragraph to record a memorandum is clearly not a "proceeding for the recovery . . . of compensation" (see s. 2, sub-s. 1, *ante*, p. 16), the condition precedent that a claim must have been made within six months of the accident does not apply. (See *Cochrane* v. *Traill & Sons* (No. 1), (1900) 2 Fraser 794.) The Irish Court of Appeal in *Marno* v. *Workman*, (1899) 34 Ir. L. T. R. 14, decided otherwise.

"**On being Satisfied as to its Genuineness.**"—SCOTCH CASE.—The *only* issue raised on such an application is the *genuineness* of the memorandum. "It is only after the amount of compensation has been determined that the memorandum is sent for registration, and the sheriff has no power to

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increase or diminish the amount or to attach conditions to its registration. If he is satisfied of its genuineness, he must grant warrant to register it." (*Cochrane* v. *Traill & Sons* (No. 2), (1900) 38 S. L. R. 18.) In the same case it was decided that no appeal lies from an order made under this paragraph, and that on an application to record a memorandum there is no power to make any order as to payment of costs or otherwise.

Sched. II., Para. 8 (*contd.*).

The decision as to costs only applies, of course, to Scotland. As to the practice in England, the matter is provided for by Rule 45 (*e*), *post*, p. 134. See Addenda.

Mode of enforcing memorandum.

"**Shall for all Purposes be enforceable as a County Court Judgment.**"—The ordinary way of enforcing a County Court judgment is, of course, by execution. (See W. C. Rules (1898), 49, p. 136.) In the case of a weekly payment, however, this is by no means a convenient process. In the last edition of this work it was suggested that, by virtue of these words, a County Court Judge can commit to prison an employer who makes default in his weekly payments under s. 5 of the Debtor's Act, 1869 (32 & 33 Vict. c. 62), as is done in the case of alimony. (See *Linton* v. *Linton*, (1888) 15 Q. B. D. 239; 54 L. J. Q. B. 529.) This opinion is now confirmed by the express decision of the Court of Appeal (*Bailey* v. *Plant* (No. 1), [1901] 1 K. B. 31; 70 L. J. K. B. 63). It is not necessary that a special memorandum of the award should have been sent in to the registrar. The award is itself a sufficient memorandum for the purpose (*Bailey* v. *Plant* (No. 2), (1901) 17 T. L. R. 449). The provision applies to awards made by a judge, or by an arbitrator appointed by a judge, and is not confined to awards by arbitrators agreed on by the parties (*ibid.*).

District in which proceedings to be taken.

(9.) Where any matter under this Act is to be done in a county court, or by to or before the judge or registrar of a county court, then, unless the contrary intention appear, the same shall, subject to rules of court, be done in, or by to or before the judge or registrar of, the county court of the district in which all the parties concerned reside, or, if they reside in different districts, the district in which the accident out of which the said matter arose occurred, without prejudice to any transfer in manner provided by rules of court.

Limits of Jurisdiction.—In *Haddock* v. *Fisher* (the *Times* newspaper, May 7, 1900) the point was raised whether a County Court Judge in England had any power to act as arbitrator under this Act, where one of the parties, the respondent, was domiciled in Ireland. The learned County Court Judge (His Honour JUDGE OWEN at Chepstow County Court) held that he had no such power. The point was not decided by the Court of Appeal, but, without any judgment being given, the matter was referred to the learned County Court Judge to be tried by consent, the costs of the appeal being left to his discretion.

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Sched. II., Para. 9 (*contd.*).

"**Transfer in Manner provided by Rules of Court.**"—See Rules 60 and 61, p. 142. It should be noted that the provisions of paragraph 8, as to the Court in which a memorandum is to be recorded, and those of paragraph 9, as to the Court in which proceedings are to be taken, are not identical. It may well happen, therefore, that a memorandum may be recorded in one jurisdiction, and it may be necessary to take further proceedings in regard to it in another. This difficulty is provided for by Rule 60 (p. 142).

Machinery of County Court available: provision for making rules of Court.

(10.) The duty of a county court judge under this Act, or of an arbitrator appointed by him, shall, subject to rules of court, be part of the duties of the county court, and the officers of the court shall act accordingly, and rules of court may be made both for any purpose for which this Act authorises rules of court to be made, and also generally for carrying into effect this Act so far as it affects the county court, or an arbitrator appointed by the judge of the county court, and proceedings in the county court or before any such arbitrator, and such rules may, in England, be made by the five judges of the county courts appointed for the making of rules under section one hundred and sixty-four of the County Courts Act, 1888, and when allowed by the Lord Chancellor, as provided by that section, shall have full effect without any further consent.

51 & 52 Vict. c. 43.

Interrogatories.

Interrogatories.—By r. 33 (1) (*a*), *post*, p. 128, a County Court Judge has power to allow the cost of interrogatories. Apparently, therefore, he has power to allow them to be administered. See note on r. 64, *post*, p. 144.

"**Shall have full Effect.**"—Rules made under this or any other provision of the Act have not such effect as to derogate from the rights conferred by the Act itself, nor is the interpretation, which the framers of the rules in any case seem to have placed upon the Act any evidence of the meaning of the words of the Act (*per* LORD HALSBURY, L.C., not reported, in the course of the argument in *Powell* v. *The Main Colliery Co.*, [1900] A. C. 366; 69 L. J. Q. B. 758).

Court fees.

(11.) No court fee shall be payable by any party in respect of any proceeding under this Act in the county court prior to the award.

"**Prior to the Award.**"—It has been suggested that these words mean that, though all the ordinary Court fees are due, they are not payable until

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the award has been made, and that thereupon they are all enforceable. It is submitted, however, that the true meaning is that the words "any proceeding . . . prior to the award" should be read closely together, and that no fee is payable in respect of such proceeding, either at the time or subsequently. This, so far as the authors are aware, is the interpretation which is universally given to the words in practice.

Sched. II., Para. 11 (*contd.*).

Solicitor's costs.

(12.) Any sum awarded as compensation shall be paid on the receipt of the person to whom it is payable under any agreement or award, and his solicitor or agent shall not be entitled to recover from him, or to claim a lien on, or deduct any amount for costs from, the said sum awarded, except such sum as may be awarded by the arbitrator or county court judge, on an application made by either party to determine the amount of costs to be paid to the said solicitor or agent, such sum to be awarded subject to taxation and to the scale of costs prescribed by rules of court.

See W. C. Rules (1898), 46 and 47, pp. 134-136 (as amended by W. C. Rules, 1899).

Medical referees.

(13.) The Secretary of State may appoint legally qualified medical practitioners for the purpose of this Act, and any committee, arbitrator, or judge may, subject to regulations made by the Secretary of State and the Treasury, appoint any such practitioner to report on any matter which seems material to any question arising in the arbitration; and the expense of any such medical practitioner shall, subject to Treasury regulations, be paid out of moneys to be provided by Parliament.

See Rules as to Medical Referees, *post*, p. 172, and W. C. Rules (1898), 25, *post*, p. 124.

Procedure in Scotland.

(14.) In the application of this schedule to Scotland—

(*a*.) "Sheriff" shall be substituted for "county court judge," "sheriff court" for "county court," "action" for "plaint," "sheriff clerk" for "registrar of the county court," and "act of sederunt" for "rules of court":

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Sched. II., Para. 14 (*contd.*).

(*b.*) Any award or agreement as to compensation under this Act may be competently recorded for execution in the books of council and session or sheriff court books, and shall be enforceable in like manner as a recorded decree arbitral:

39 & 40 Vict. c. 70.

(*c.*) Any application to the sheriff as arbitrator shall be heard, tried, and determined summarily in the manner provided by the fifty-second section of the Sheriff Courts (Scotland) Act, 1876, save only that parties may be represented by any person authorised in writing to appear for them and subject to the declaration that it shall be competent to either party within the time and in accordance with the conditions prescribed by act of sederunt to require the sheriff to state a case on any question of law determined by him, and his decision thereon in such case may be submitted to either division of the Court of Session, who may hear and determine the same finally, and remit to the sheriff with instruction as to the judgment to be pronounced.

"**Hear and Determine Finally.**"—No appeal lies to the House of Lords. (*Osborne* v. *Barclay, Curle & Co.*, [1901] A. C. 269; sub. nom. *M'Kinnon* v. *Barclay, Curle & Co.*, (1901) 38 S. L. R. 611.)*

(15.) Paragraphs four and seven of this schedule shall not apply to Scotland.

Ireland.

(16.) In the application of this schedule to Ireland the expression "county court judge" shall include the recorder of any city or town.

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* Scotch litigants are, however, in subsequent cases entitled to the benefit of decisions in the House of Lords in *pari materia*, and the Scotch courts are not bound by their own previous decisions in the face of decisions in the House of Lords. (See *Nelson* v. *Kerr & Mitchell*, (1901) 38 S. L. R. 645; *Leonard* v. *Baird & Co.*, (1901) 38 S. L. R. 649; see also particularly the judgment of LORD M'LAREN in *Great North of Scotland Railway Co.* v. *Fraser*, (1901) 38 S. L. R. on p. 656.)

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THE

WORKMEN'S COMPENSATION ACT, 1900.

An Act to extend the Benefits of the Workmen's Compensation Act, 1897, *to Workmen in Agriculture.*

A.D. 1900.

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Sect. 1, Sub-sec. 1.

Application of Workmen's Compensation Act (60 & 61 Vict. c. 37) to agricultural work.

1.—(1.) From and after the commencement of this Act, the Workmen's Compensation Act, 1897, shall apply to the employment of workmen in agriculture by any employer who habitually employs one or more workmen in such employment.

"**Commencement of this Act,**"—*i.e.* July 1, 1901 (see s. 3).

"**In Agriculture.**"—These words are not like the governing words of s. 7, sub-s. 1, of the principal Act ("on, in, or about," etc.), words of locality. Hence the necessity for the provision in s. 1, sub-s. 3, of this Act. The principal Act covers any sort of employment by the undertakers in the localities enumerated (*e.g.* railways, factories, etc.), whether that employment is the main business of the undertaker or only subsidiary or incidental thereto. The words here not being words of locality, the provision in s. 1, sub-s. 3, was necessary to bring in workmen who, at the time of the accident, were not actually engaged in agriculture. (See also note on s. 1, sub-s. 3, *post.*)

Must employment be for hire?

"**Habitually employs.**"—The question will doubtless arise whether this means "habitually employs for hire." In many farms members of the family are "habitually employed" without receiving wages. It has not yet been decided whether they would be within the Act, but it is

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Sect. 1, Sub-sec. 1 (*contd.*).

submitted that it is not necessary to restrict the words to cases where actual money wages are paid by the employer. The regular employment even of a member of the family in return for his keep would, it is suggested, be employment within the meaning of the Act.*

(2.) Where any such employer agrees with a contractor for the execution by or under that contractor of any work in agriculture, section four of the Workmen's Compensation Act, 1897, shall apply in respect of any workmen employed in such work as if that employer were an undertaker within the meaning of that Act.

Provided that where the contractor provides and uses machinery driven by mechanical power for the purpose of threshing, ploughing, or other agricultural work, he, and he alone, shall be liable under this Act to pay compensation to any workman employed by him on such work.

"**Where the Contractor . . . uses Machinery.**"—These words introduce an exception to the scheme of the principal Act—which, in cases where a contractor intervenes between the workman and the undertaker, makes the undertaker alone liable to pay compensation under the Act. (See notes to s. 4 of the principal Act.)

Meaning of "mechanical power."

"**Mechanical Power.**"—No doubt, by an oversight, these words vary from the formula used throughout the principal Act, which is "steam, water, or other mechanical power." In the principal Act the words "mechanical power" are thus restricted by the doctrine of *ejusdem generis*, and mean "mechanical power of the same nature as steam or water." (See note on s. 7, sub-s. 1, *ante*, p. 42.) Although there is here no such limitation, it is submitted that the same restriction in fact applies, as it is impossible to conceive of any mechanical *driving* power other than steam, water, gas, electricity, etc. Although an arrangement of levers, pulleys, etc., may increase the *result* of the power applied, machinery could not properly be said to be *driven* by any such mechanism. (See the judgment of STIRLING, L.J., in *Wilmott* v. *Paton*, as reported in 71 L. J. K. B. at p. 3.)

(3.) Where any workman is employed by the same employer mainly in agricultural but partly or occasionally in other work, this Act shall apply also to the employment of the workman in such other work.

* In the original Bill the words "for hire" were inserted, but were struck out in committee.

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The expression "agriculture" includes horticulture, forestry, and the use of land for any purpose of husbandry, inclusive of the keeping or breeding of live stock, poultry, or bees, and the growth of fruit and vegetables.

Sect. 1, Sub-sec. 3 (*contd.*).

"**In other Work.**"—See note on s. 1, sub-s. 1. The effect of this provision would seem to be to include in the Act not only the agricultural labourer while engaged in other than agricultural work on the employer's premises, but also the agricultural labourer when doing *any* work for his employer *anywhere*. No doubt the provision was intended to have this effect in order to include such cases as those of the farm servant who is injured by the cattle which he is driving to market, and the gardener who occasionally acts as groom or coachman, and is injured while so doing. Provided the workman's *main* employment is agricultural, it is submitted that he is within the Act, wherever he is when injured, so long as he is working for his employer.

Provision brings in labourers in agriculture even when not so employed.

"**Includes . . . inclusive of.**"—Neither branch of this definition thus purports to be exclusive, and, subject to the inclusion of the occupations enumerated, the word "agriculture" must presumably be understood in its popular and ordinary sense.

2. This Act may be cited as the Workmen's Compensation Act, 1900, and shall be read as one with the Workmen's Compensation Act, 1897, and that Act and this Act may be cited together as the Workmen's Compensation Acts, 1897 and 1900.

Short title and incorporation.

3. This Act shall come into operation on the first day of July one thousand nine hundred and one.

Commencement of Act.

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THE

WORKMEN'S COMPENSATION RULES, 1898.

DATED MAY 27, 1898. AMENDED SEPTEMBER 1, 1899.
FURTHER AMENDED NOVEMBER 27, 1900.

Preliminary.

R. 1 (1).

Effect, short title, commencement, and construction of Rules. 60 & 61 Vict. c. 37.

1. (1.) The following Rules shall have effect under the Workmen's Compensation Act, 1897 (in these Rules referred to as the Act), with reference to any matter or proceeding for the regulation of which Rules of Court may be made under the Act, and generally for carrying the Act into effect so far as it affects the County Court or an arbitrator appointed by the judge of the County Court, and proceedings in the County Court or before any such arbitrator.

(2.) These Rules may be cited as the Workmen's Compensation Rules, 1898, and shall come into operation on the first day of July one thousand eight hundred and ninety-eight.

52 & 53 Vict. c. 63.

(3.) The Interpretation Act, 1889, shall apply for the purpose of the interpretation of these Rules as it applies for the purpose of the interpretation of an Act of Parliament.

(4.) These Rules shall also be read and construed with the County Court Rules, 1889, and the County Court Rules of subsequent date amending the same; and any Order and Rule referred to by number in these Rules shall mean the Order and Rule so numbered in the County Court Rules, 1889, or in any County Court Rules of subsequent date, as the case may be.

Parties to Arbitration before Judge or Arbitrator appointed by Judge.

Parties to arbitration. [*Conf.* Order XL., Rule 1. Order XIV., Rule 2.]

2. (1.) When application is made for the settlement by the judge, or by an arbitrator appointed by the judge, of any matter which under the Act is to be settled by arbitration, the party making such application shall be called "the applicant;" and, subject to these rules, all other persons whose presence at the arbitration may be necessary to enable the

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judge or arbitrator effectively and completely to adjudicate upon and settle all the questions involved shall be made parties to the application, and shall be called "the respondents."

R. 2 (1) (*contd.*).

"**Persons whose Presence . . . may be Necessary.**"—This question was discussed, but not determined, in *Beavan* v. *Crawshay Bros.*, (1901) 18 T. L. R. 17.

(2.) In any case in which both the undertakers as defined by the Act and a contractor with them are alleged to be liable to pay compensation under the Act, the applicant may at his option make both the undertakers and the contractor, or either of them, respondents.

"**Both the Undertakers . . . and the Contractor.**"—See notes on s. 4 of the Act.

3. More persons than one may be joined as applicants in one arbitration in any case in which such persons might be joined in one action as plaintiffs under Order III., Rule 1*a*, of the County Court Rules (Rule 1 of the County Court Rules, December, 1896); and that rule, and Rules 18 and 19 of Order XLIV., shall, with the necessary modifications, apply to any such arbitration.

Joinder of applicants. [*Conf.* Order III., Rule 1*a* (Rule 1 of December, 1896).] Order XLIV., Rules 18, 19.

Note.—The following are the rules above referred to :—

"1*a*. All persons may be joined in one action as plaintiffs in whom any right to relief in respect of or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally, or in the alternative, where, if such persons brought separate actions, any common question of law or fact would arise: Provided that if upon the application of any defendant it shall appear that such joinder may embarrass or delay the trial, the judge may order separate trials, or make such other order as may be expedient. And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to any extra costs occasioned by so joining any person who shall not be found entitled to relief, unless the court in disposing of the costs of the action shall otherwise direct. O. III., r. 1*a*.

"18. Where two or more persons are joined as plaintiffs under Order III., Rule 1, and the negligence, act, or omission which is the cause of action shall be proved, the judgment shall be for all the plaintiffs, but the amount of the sum so awarded for damages and the costs ordered to be paid to each such plaintiff shall be found and set forth in the judgment, and the amount of costs awarded in the action shall be ordered to be paid to such person and in such manner as the court may think fit. O. XLIV., r. 18.

"19. Should the defendant fail to pay the several amounts of compensation and the costs awarded in the action, execution against his goods may issue as in an ordinary action, and should the proceeds of the execution be insufficient, after deducting all costs, to pay the whole of the amounts awarded, a dividend shall be paid to each plaintiff, calculated upon the proportion of the amount which shall have been awarded to the respective plaintiffs to the total amount realized after the deduction of all the costs of the action as aforesaid." O. XLIV., r. 19.

4. (1.) An application on behalf of the dependants of a deceased workman for the settlement by arbitration of the amount payable as compensation to such dependants shall be made by the legal personal representative, if any, of the deceased workman on behalf of such dependants, and such legal personal representative shall file, as part of

Application by dependants. [*Conf.* 9 & 10 Vict. c. 93. 27 & 28 Vict. c. 95.]

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R. 4 (1) (*contd.*).

the particulars hereinafter mentioned, particulars as to the dependants on whose behalf such application is made.

(2.) If there is no such legal personal representative, the application may be made by the dependants themselves.

(3.) Provided, that if there is any conflict of interest between the dependants themselves, the application may be made by such legal personal representative on behalf of some only of such dependants, or if there is no such legal personal representative, the application may be made by some only of such dependants, the other dependants in either case being named as respondents.

"**The other Dependants . . . Respondents.**"—"This provision for making dependants parties is not so absolute as is contended for" (*per* COLLINS, M.R., in *Beavan* v. *Crawshay Bros.*, as reported in 18 T. L. R. 17).

(4.) In the construction of this rule the term "dependants" shall include persons who claim to be dependants, but as to whose claim to rank as dependants any question arises.

Application by dependants under Act, Sched. 1, par. 5, where amount of compensation agreed or ascertained.

5. (1.) In any case in which the amount payable as compensation to the dependants of a deceased workman has been agreed upon or ascertained, but any question arises as to who are dependants, or as to the amount payable to each dependant, an application for the settlement of such question by arbitration may be made either by the legal personal representative (if any) of the deceased workman on behalf of the dependants or any of them, or, if there is no legal personal representative, by such dependants or any of them, against the other dependants, and the persons claiming to be dependants, but as to whose claim to rank as such a question arises; or such application may be made by the persons claiming to be dependants, but as to whose claim to rank as such a question arises, or any of them, against the legal personal representative (if any) of the deceased workman, and the dependants, and such of the persons claiming to be dependants as are not applicants.

(2.) In any such case, if the employer has paid the agreed or ascertained amount of compensation, it shall not be necessary to make him a respondent, but if such compensation or any part thereof is still in his hands he shall be made a respondent.

(3.) In any such case the employer, if made a respondent, may pay the amount of compensation in his hands into court, to be dealt with as the judge or arbitrator shall direct, and thereupon further proceedings against him shall be stayed.

Parties; arbitration as to sum payable for medical attendance and burial. Act, Sched. 1, par. 1 (*a*) (iii.).

6. (1.) An application for the settlement by arbitration of the sum payable in respect of medical attendance on and the burial of a deceased workman who leaves no dependants shall be made by the legal personal representative (if any) of the deceased workman. If there is no such legal personal representative, the application may be made by any person to whom any such expenses are due. In the latter case any other person known to the applicant as a person to whom any such expenses are due shall be joined in the application either as applicant or respondent.

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(2.) In any case in which application is made for the settlement by arbitration of such amount, the amount awarded, if insufficient for the payment of such expenses in full, shall be apportioned between the persons to whom such expenses are due in such manner as the judge or arbitrator shall direct.

R. 6 (2).

Apportionment of such sum.

7. The provisions of Rules 7 and 8 of Order III. as to parties suing or defending on behalf of other persons having the same interest, and the provisions of the County Court Rules as to persons under disability and partners suing and being sued, shall, with the necessary modifications, apply to proceedings by way of arbitration under the Act.

Parties, under disability and partners; representation of parties having the same interest.

Note.—The following are the rules above referred to :—

[Order III., Rules 7, 8, etc.]

"7. Where there are numerous persons having the same interest in one action or matter, one or more of such persons may sue or be sued, or may be authorized, at or before the trial, by the judge or registrar to defend in such action or matter, on behalf or for the benefit of all parties so interested.

O. III., r. 7. Where parties numerous, one or more may sue or be sued or defend for the benefit of all.

"8. Where a defendant desires to defend on behalf or for the benefit of others having the same interest, he shall within two clear days of the date of service of the summons on him give notice to the plaintiff of his intention to apply, upon a day and hour to be named in such notice, to the registrar for leave so to defend, and shall file an affidavit of the facts upon which he relies to obtain such leave, together with the names, addresses, and occupations of such persons, and the registrar may thereupon make an order for the defendant so to defend, and shall add the names to that of the defendant in the plaint and minute-book, and a copy of such order shall be personally served on each of such persons and notice sent to the plaintiff according to the form in the Appendix: provided that the plaintiff or any of the persons whose names have been so added may at the trial object to the defendant defending on behalf of all or any of the persons as to whom such order has been made, and the judge may thereupon, if he thinks fit, strike the name of all or any of such persons out of the proceedings, and order the defendant to pay such costs as he shall think fit.

O. III., r. 8. Where defendant desires to defend on behalf of others.

"9. Infants may sue as plaintiffs by their next friends, and may defend by their guardians appointed for that purpose, but nothing herein contained shall affect the right of any infant to sue as if he were of full age in the cases enumerated in section ninety-six of the Act.

O. III., r. 9. Infants. 51 & 52 Vict. c. 43, s. 96.

"10. In those cases to which the Married Women's Property Act, 1882, does not apply, a married woman may sue by her next friend, nevertheless by leave of the judge or registrar she may sue or defend without her husband and without a next friend, on giving such security, if any, for costs, as the judge or registrar may require, and such leave may, in the discretion of the judge or registrar, be given with or without the imposition of terms, at the trial, or at any time during the course of the action or matter.

O. III., r. 10. Married women. 45 & 46 Vict. c. 75.

"11. In all cases in which lunatics and persons of unsound mind not so found by inquisition might respectively before the 1st November, 1875, have sued as plaintiffs or would have been liable to be sued as defendants in any action, they may respectively sue as plaintiffs in any action by their committee or next friend according to the practice of the chancery division of the high court of justice, and may in like manner defend any action by their committees or guardians appointed for that purpose.

O. III., r. 11. Lunatics and persons of unsound mind.

"12. In all actions or matters to which any infant or person of unsound mind, whether so found by inquisition or not, or person under any other disability, is a party, any consent as to the mode of taking evidence or as to any other procedure given by the next friend, guardian, committee, or other person acting on behalf of the person under disability, shall, with the consent of the judge, have the same force and effect as if such party were under no disability and had given such consent. Provided that no such consent by any committee of a lunatic shall

O. III., r. 12. Persons under disability how consents for can be given.

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R. 7 (*contd.*).

be valid as between him and the lunatic unless given with the sanction of the lord chancellor or lords justices sitting in lunacy.

O. III., r. 13*a*. Co-partners may sue and be sued in the name of their firm.

"13*a*. Any two or more persons claiming or being liable as co-partners may sue or be sued in the name of the respective firms, if any, of which such persons were co-partners at the time of the accruing of the cause of action; and in any such case on application by any party to the action the registrar may order a statement of the names of the persons who were at the time of the accruing of the cause of action co-partners in any such firm, to be furnished in such manner, and verified on oath or otherwise, as the registrar may direct;

O. III., r. 14*a*. Application for names of firm in an action by a firm.

"14*a*. Where an action is brought by partners in the name of their firm the plaintiffs or their solicitors shall, on demand made in writing by or on behalf of any defendant, forthwith send by post to the defendant so applying and to the registrar the names and places of residence of all the persons constituting the firm on whose behalf the action is brought. And if the plaintiffs or their solicitors shall fail to comply with such demand, all proceedings in the action may, upon an application for that purpose, be stayed upon such terms as the Judge may direct, or the Judge at the trial may adjourn the hearing on such terms as he may think fit. And when the names of the partners are so declared, the action shall proceed in the same manner and the same consequences in all respects shall follow as if they had been named as the plaintiffs in the summons. But all the proceedings shall, nevertheless, continue in the name of the firm.

O. III., r. 16*a*. Where business is carried on by one person.

"16*a*. Any person carrying on business in a name or style other than his own name may be sued in such name or style, as if it were a firm name, and so far as the nature of the case will permit, all the provisions of these rules relating to proceedings against firms shall apply."

Application for Arbitration.

Application, how made.

8. An application for the settlement of any matter by arbitration shall be made by the applicant filing with the registrar a request for arbitration, intituled in the matter of the Act and in the matter of the arbitration, which request shall be entered and numbered as a plaint, and shall, with the subsequent proceedings thereon, be recorded in the special register hereinafter mentioned.

Particulars. [*Conf.* Order XL., 2. Order XLI., 3. Order XLIV., 2, 3.]

9. Particulars shall be appended or annexed to the request, containing—

(*a*) A concise statement of the circumstances under which the application is made, and the relief or order which the applicant claims;

(*b*) The date of service of notice of the accident on the employer, or, if such notice has not been served, the reason for such omission; and

(*c*) The full names and addresses of the respondents, and of the applicant and his solicitor, if the proceedings are commenced through a solicitor.

Forms of request and particulars. Forms 1 to 5.

10. (1.) The request and particulars shall be according to such of the forms in the Appendix as shall be applicable to the case, with such modifications as the nature of the case shall require.

Note.—As to the nature and the authority of the Form provided by these Rules, see the judgment of ROMER, L.J., in the case of *Powell* v. *Main Colliery Co.*, in the Court of Appeal, (1900) 69 L. J. Q. B. 542, adopted as his own by LORD DAVEY in the House of Lords.

(2.) A copy of the notice of the accident shall be appended or annexed

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to the particulars. If this rule cannot be complied with, the reason for the omission shall be stated in the particulars.

R. 10 (2) (*contd.*).

*10*a*. (1.) Where an employer on whom a claim for compensation has been made desires to make an application for the settlement of any matter by arbitration, he shall file a request for arbitration in accordance with Rule 8, to which the workman, or the legal personal representative (if any) and the persons claiming to be dependants of a deceased workman, or the other persons (as the case may be) on whose behalf the claim was made shall be respondents.

Application by employer.

(2.) Particulars shall be appended or annexed to the request, containing—

(*a*.) A concise statement of the circumstances under which the application is made;

(*b*.) A statement whether the applicant admits his liability to pay compensation, or denies such liability, wholly or partially, with (in the latter case) a statement of the grounds on and extent to which he denies liability;

(*c*.) A statement of the matters which the applicant desires to have settled by arbitration; and

(*d*.) The full names and addresses of the respondents, and of the applicant and his solicitor, if the proceedings are commenced through a solicitor.

11. The applicant shall deliver to the registrar with the request and particulars a copy thereof for the judge or arbitrator, and a copy for each respondent to be served.

Copies for judge and respondents.

12. Where the applicant is illiterate and unable to furnish the required information in writing, the request and particulars and copies shall be filled up by the registrar's clerk.

Where applicant is illiterate. [*Conf.* Order V., Rule 4*a*.]

Proceedings on Arbitration before Judge.

Fixing Day and Place for Arbitration.

13. (1.) On the filing of a request for arbitration, the registrar shall transmit a copy of the request and particulars to the judge, who shall as soon as conveniently may be (if he decides to settle the matter himself), appoint a day and hour for proceeding with the arbitration. Such day shall be so fixed as to allow the copies of the request and particulars to be served on the respondents at least fifteen † clear days before the day so fixed.

Fixing day and place for arbitration. [*Conf.* Order XL., Rule 5.]

(2.) The arbitration shall, subject as hereinafter mentioned, be held at the place at which the Court is held.

(3.) Provided, that the judge may direct that the arbitration shall be held at any other place within the district of the Court, on application in

[*Conf.* Order XXXIXB., Rules 1, 2.]

* Added by the Workmen's Compensation Rules, 1900.

† As amended by the Rules of 1899. The original rule read "ten."

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R. 13 (3) (*contd.*).

that behalf made by any party to the arbitration, and on such party filing an undertaking to provide at his own expense a place to the satisfaction of the judge in which the arbitration may be held, and to pay the necessary expenses of the judge and officers of the Court attending at such place.

(4.) If such direction is given before the notices mentioned in the next following rule are issued, the registrar shall insert in such notices the place at which the arbitration has been so directed to be held.

(5.) If such direction is given after such notices have been issued, the registrar shall forthwith send notice by post to the parties of the place at which the arbitration has been so directed to be held.

Notice of Day Fixed.

Notice to parties. [*Conf.* Order XXXVIII., Rule 2.]

14. (1.) On the day for proceeding with an arbitration being fixed, the registrar shall give or send by post notice in writing to the applicant, stating the place at which and the day and hour on and at which the arbitration will be proceeded with, and shall issue the copies of the request and particulars, under the seal of the court, for service on the respondents, together with notices signed by the registrar himself, and under the seal of the court, stating the place at which and the day and hour on and at which the arbitration will be proceeded with, and that if the respondents do not attend in person or by their solicitors such order will be made and proceedings taken as the judge may think just and expedient.

Forms 6, 7.

Notice where employer is applicant. Form 7.

*(2.) Where the request is filed by an employer, the notices to be served on the respondents shall be modified by the omission of the words therein relating to the denial or admission of liability to pay compensation.

*(3.) The words "ten clear days" shall be substituted for the words "five clear days" in Form 7 in the Appendix.

Service on Respondents.

Service on respondents. [Order VII., Rule 30.]

15. (1.) The copies and notices mentioned in the last preceding rule may be served—

(*a.*) By a bailiff of a court;

or, at the request of the applicant or his solicitor,

(*b.*) By the applicant or some clerk or servant in his permanent and exclusive employ; or

(*c.*) By the applicant's solicitor, or a solicitor acting as agent for such solicitor, or some person in the employ of either of them.

(2.) Service may be effected either in accordance with the rules as to service of default summonses, or by registered post in accordance with the provisions of sub-sections 4 and 5 of section 2 of the Act with reference to service of notice in respect of an injury, and the provisions of those sub-sections shall apply to such service.

Act, Sect. 2, Sub-sects. 4, 5.

* Added by the Workmen's Compensation Rules, 1900.

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(3.) Where service is effected otherwise than by a bailiff, a copy of the document served, with the date and mode of service endorsed thereon, shall within three clear days next after the date of service, or such further time as may be allowed by the registrar of the court issuing such document, be delivered or transmitted to such registrar by the applicant or his solicitor. The applicant or his solicitor shall also (unless the respondent files an answer) after the time limited for filing an answer, deliver or transmit to the registrar an affidavit of the service of such document, according to Form 21 in the Appendix to the County Court Rules, with such variations as the circumstances of the case shall require.

R. 15 (3).

Where service effected otherwise than by bailiff. [Order VII., Rule 31.]

Note.—The following is the form above referred to :—

"21. Affidavit of Service of a Default Summons.

"I, A. B., of
[*or* G. H., a clerk [*or* servant] in the permanent and exclusive employ of]
[*or* L. M., of , the solicitor for]
[*or* R. S., of , solicitor, agent for L. M., of , the solicitor for]
[*or* X. Y., a clerk in the employ of [R. S., of , solicitor, agent for] L. M., of , solicitor for]
the above-named plaintiff make oath and say:

"That I [am a clerk [*or* servant] in the permanent and exclusive employ of]
or am a clerk in the employ of [R. S., of , solicitor, agent for] L. M., of , solicitor for] the above-named plaintiff, and that I am over sixteen years of age.

"That I did on the day of 19 , duly serve E. F., the above-named defendant [*or* one of the above-named defendants] with a summons, a true copy whereof is hereunto annexed, marked 'A,' by delivering the same personally to the said defendant [*here insert place where service was made*].

"(*Indorse the copy-summons or other process thus*:—This paper, marked 'A,' is the paper referred to in the annexed affidavit.)"

Stay of Proceedings.

16. Where several requests for arbitration are filed by different applicants against the same respondent in the same Court in respect of matters arising out of the same circumstances, the respondent may, on filing an undertaking to be bound, so far as his liability to pay compensation is concerned, by the award in such one of the said arbitrations as may be selected by the judge, apply to the judge under Order VIII., Rule 2, for an order to stay proceedings in the arbitrations other than the one so selected until an award is made in such selected arbitration; and Rules 2 to 6 of Order VIII. shall, with the necessary modifications, apply accordingly.

Stay of proceedings in other arbitrations, to abide decision as to liability in selected arbitration. [*Conf.* Order VIII., Rules 2–6.]

Note.—The following are the Rules above referred to :—

"2. Where several actions shall be brought by different plaintiffs against the same defendant in the same court for or in respect of causes of action arising out of the same breach of contract, wrong or other circumstances, the defendant may, on filing an undertaking to be bound so far as his liability in the said several actions is concerned by the decision in such one of the said actions as may be selected by the judge apply to the judge for an order to stay the proceedings in

O. VIII., r. 2. Stay of proceedings.

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R. 16 (*contd.*).

O. VIII., r. 3. Stay of proceedings: application for.

O. VIII., r. 4. Judge may impose terms.

O. VIII., r. 5. Where judgment in favour of defendant in selected action.

O. VIII., r. 6. Where judgment given against defendant in selected action.

the actions other than in the one so selected, until judgment is given in such selected action.

"3. Applications under the two preceding rules shall be made upon notice to the plaintiffs to be affected by any order made thereon.

"4. Upon the hearing of any application for consolidation of actions or for stay of proceedings, the judge shall have power to impose such terms and conditions and make such order in the matter as may be just.

"5. In case a judgment in a selected action under Rule 2 of the Order shall be given in favour of the defendant, the defendant shall be entitled to his costs up to the date of the order staying proceedings against every other plaintiff whose action is stayed, unless such plaintiff shall give the registrar within one month from such judgment written notice to set down his action for hearing, which, on the receipt of such notice, the registrar shall forthwith do and give notice thereof to the plaintiff and defendant.

"6. In case a judgment in a selected action shall be given against the defendant, the plaintiffs in the actions stayed shall be at liberty to proceed for the purpose of ascertaining and recovering their debts or damages and costs."

Answer by Respondents.

Answer by respondent. [*Conf.* Order X., Rules 9, 10.]

17. (1.) If any respondent desires to disclaim any interest in the subject matter of the arbitration, or considers that the applicant's particulars are in any respect inaccurate or incomplete, or desires to bring any fact or document to the notice of the judge, or intends to rely on the fact that notice of the accident was not served in accordance with section 2 of the Act, or that the claim for compensation was not made within the time limited by the said section, or intends to deny (wholly or partially) his liability to pay compensation under the Act, he shall, ten * clear days at least before the day fixed for proceeding with the arbitration, file with the registrar an answer, stating his name and address, and the name and address of his solicitor (if any), and stating that he disclaims any interest in the subject matter of the arbitration, or stating in what respect the particulars are inaccurate or incomplete, or stating concisely any fact or document which he desires to bring to the notice of the judge, or on which he intends to rely, or the grounds on and extent to which he denies liability.

Form 8.

(2.) Such respondent shall, with such answer, file copies thereof for the applicant and the judge, and one copy for each of the other respondents, and the registrar shall within twenty-four hours after receiving such copies transmit the same by post to the applicant and the judge and the other respondents respectively.

(3.) Subject to any answer so filed, and to the provisions of the next following paragraph, the applicant's particulars, and, in the case of a claim for compensation, the liability to pay compensation under the Act, shall be taken to be admitted.

(4.) Provided, that in case of non-compliance with this rule, and of the applicant's not consenting at the arbitration to permit a respondent to avail himself of any matter of which he should, pursuant to this rule,

* As amended by the Workmen's Compensation Rules, 1899. The original rule read "five."

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have given notice by filing an answer, the judge may, on such terms as he shall think fit, either proceed with the arbitration and allow the respondent to avail himself of such matter, or adjourn the arbitration to enable the respondent to file such answer.

R. 17 (4) (*contd.*).

Note.—The judge is not bound to take either of these courses; he may, if he prefers, proceed with the arbitration, and refuse to allow the respondent to avail himself of any matter of which he has failed to give notice. (*Silvester* v. *Cude*, (1899) 15 T. L. R. 434.)

*(5.) The provisions of this rule shall, with the necessary modifications, apply to a case in which a request for arbitration is filed by an employer; but a respondent who fails to file an answer shall not be taken to admit the truth of any statement in the applicant's particulars in which he denies, wholly or partially, his liability to pay compensation.

Answer where employer is applicant.

Submission to Award or Payment into Court by Respondents.

18. (1.) Where a respondent from whom compensation is claimed admits liability, he may at any time before the day fixed for proceeding with the arbitration,

Submission to award or payment into court by respondents. Form 9.

(*a.*) Where the application is made by an injured workman, file with the registrar a notice that the respondent submits to an award for the payment of a weekly sum, to be specified in such notice; or

(*b.*) Where the application is made on behalf of the dependants of a deceased workman, or for the settlement of the sum payable in respect of medical attendance on and the burial of a deceased workman who leaves no dependants, pay into court such sum of money as the respondent considers sufficient to cover his liability in the circumstances of the case.

Payment into Court.—It is important to notice that the Rules make no provision for payment into Court with a denial of liability. If, therefore, an employer pays money into Court, he will find himself precluded from raising any such contention as that the employment was not one to which the Act applies, or that the accident did not arise out of and in the course of the workman's employment. Unless he obtains leave to amend, he will be taken to have admitted liability, and will only be entitled to argue as to the amount of compensation payable.

(2.) The registrar shall, within twenty-four hours from the time of any notice filed or payment made pursuant to the last preceding paragraph, send notice thereof (with, where a notice is filed, a copy of such notice) to the applicant, and to the other respondents (if any).

[*Conf.* Order IX., Rule 11 (2).] Forms 10, 11:

(3.) If the applicant is a workman, and elects to accept in satisfaction of his claim the weekly payment specified in the respondent's notice, he shall send to the registrar and to the respondent by post, or leave at the registrar's office and at the residence or place of business of the

Acceptance of weekly payment offered.

* Added by the Workmen's Compensation Rules, 1900.

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R. 18 (3) (*contd.*).

Form 12.

[*Conf.* Order IX., Rule 12*a*.]

respondent, a written notice stating such acceptance, within such reasonable time before the day fixed for proceeding with the arbitration as the time of filing of notice of submission by the respondent has permitted.

Acceptance of sum paid into Court.

Form 12.

[*Conf.* Order IX., Rule 12*a*.]

(4.) If the application for arbitration is made on behalf of the dependants of a deceased workman, or for the settlement of the sum payable in respect of medical attendance and burial as aforesaid, and the applicant is willing to accept the sum paid into court in satisfaction of the compensation payable to the dependants, or in respect of such medical attendance and burial (as the case may be), he shall send to the registrar and to the respondent by post, or leave at the registrar's office and at the residence or place of business of the respondent, a written notice of such willingness, within such reasonable time before the day fixed for proceeding with the arbitration as the time of payment into court by the respondent has permitted.

If there are any other respondents, the applicant shall in like manner give notice of such willingness to such respondents; and if any of such respondents are willing to accept the sum paid into court in satisfaction of such compensation as aforesaid, they shall in like manner give notice of such willingness to the registrar and to the applicant and the other respondents.

Procedure if weekly payment offered or sum paid in is accepted.

(5.) If the applicant is a workman, and elects to accept in satisfaction of his claim the weekly payment submitted to by the respondent, or if in any other case the applicant and all the respondents give notice of their willingness to accept the sum paid into court, the following provisions shall apply:—

(*a*.) Where the respondent submits to an award for the payment of a weekly sum, the judge may, on application made to him in or out of court, forthwith make an award directing payment of such weekly sum accordingly;

(*b*.) Where the respondent has paid money into court, further proceedings against such respondent shall be stayed, except as hereinafter mentioned; and

(i.) If the applicant and the other respondents agree as to the apportionment and application of such sum, the judge may, on application made to him in or out of court on behalf of or with the consent of all such parties, forthwith make an award for such apportionment and application;

(ii.) In any other case the arbitration may proceed as between the applicant and the other respondents.

Costs payable by respondent. [*Conf.* Order IX., Rule 12*a*(3).]

(*c*.) In any such case the judge may, in his discretion, by his award order the respondent filing notice of submission to an award or paying money into court to pay such costs as the applicant and the other respondents or any of them may have properly incurred before the receipt of notice of submission to an award or payment into court, including, if the judge on consideration of the facts of the case

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shall so order, any items which might have been allowed by order of the judge at the hearing of the arbitration.

R. 18 (5) (*contd.*).

(*d.*) If the applicant or any respondent intends to apply for any such costs, he shall give notice of his intention in his notice of acceptance.

Form 12. [*Conf.* Order IX., Rule 12*a*(4).]

(6.) In default of notice of acceptance by the applicant and all the respondents, the arbitration may proceed; but if no greater weekly payment or compensation is awarded than that which the respondent has submitted to pay or has paid into court, such respondent shall not be liable to pay any further costs than such as he might have been ordered to pay if the weekly payment offered or sum paid into court had been accepted; and the judge may order any costs incurred by such respondent after notice of submission to an award or payment into court to be paid by any party who has not given notice of acceptance of such weekly payment or sum, and may order such costs to be set off against any costs payable to such party, or to be deducted from any weekly payment or compensation awarded to such party. The judge may also order any costs incurred after notice of payment into court by any party who has given notice of acceptance to be paid by any other party who has not given such notice, and to be deducted from any compensation awarded to such last-mentioned party.

Procedure and costs if weekly sum offered or sum paid in is not accepted.

* (7.) The provisions of this rule shall, with the necessary modifications, apply to a case in which an employer who has filed a request for arbitration admits liability to pay compensation.

Submission to award or payment into Court where employer is applicant.

Notice to parties against whom Indemnity claimed under section 4 or section 6, or otherwise.

19. Where a respondent claims to be entitled under section 4 or section 6 of the Act or otherwise to indemnity over against any person not a party to the arbitration, he shall, five clear days before the day fixed for proceeding with the arbitration, file a notice of his claim, according to the form in the Appendix; and the registrar shall seal such notice and deliver it to the respondent, who shall serve the same, together with a copy of the applicant's request and particulars, and of the notice served on the respondent under Rules 14 and 15, upon the person against whom such claim is made; and the provisions of Rule 15 shall apply to such service.

Notice of claim to indemnity under sect. 4 or sect. 6, or otherwise.

Form 13.

20. If any person served with a notice under the last preceding rule (hereinafter called the third party) desires to dispute the applicant's claim in the arbitration as against the respondent on whose behalf the notice has been given, he must appear before the judge on the day fixed for proceeding with the arbitration, or on any day to which he may have received notice from the registrar that the arbitration has been adjourned

If person served make default in appearing, he is to be deemed to admit validity of award against respondent.

* Added by the Workmen's Compensation Rules, 1900.

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R. 20 (*contd.*).

or postponed; and in default of his so doing he shall be deemed to admit the validity of any award made against such respondent, as to any matter which the judge has jurisdiction to decide in the arbitration as between the applicant and the respondent, whether such award is made by consent or otherwise.

Application to judge for directions as to conduct of arbitration.

21. (1.) The third party or the respondent may apply at or before the arbitration to the judge for directions; and the judge, upon the hearing of the application, may, if it shall appear desirable so to do, give the third party leave to resist the claim of the applicant against the respondent upon such terms as may be just, or to appear at the arbitration and take such part therein as may be just, and generally may give such directions as he shall think proper.

(2.) If the third party obtains leave to resist the claim of the applicant against the respondent, the judge shall have the same power to award costs as between the applicant and the third party as he has to award costs between the applicant and the respondent.

Judge how far empowered to decide questions as to liability of third party.

22. (1.) Nothing in these Rules shall empower the judge to decide (otherwise than by consent) any question as to the liability of such third party to indemnify the respondent, or to make any award in favour of the respondent against such third party, or to make any further or other order than that the third party shall not be entitled in any future proceedings between the respondent and such third party to dispute the validity of the award as to any matter which the judge has jurisdiction to decide in the arbitration as between the applicant and the respondent.

Note.—In the "Explanatory Memorandum" issued with these Rules, the following observations occur on this subject:—

"The question has been considered, to what extent the third party procedure under Order XI. can be applied in cases in which an employer claims under either of these sections to be entitled to indemnity against a sub-contractor or a stranger; and the Rules are framed on the assumption that it can be only applied for the purpose of providing that a sub-contractor (unless he is himself liable as an employer under this Act), or a stranger, shall not be entitled in any future proceeding to dispute the validity of an award against the employer.

"An arbitration under the Act will be a very different thing from an action: and the question whether such a sub-contractor or a stranger is liable to the workman, and is consequently liable under the sections referred to to indemnify the employer, is a very different one from the question whether the employer is liable to the workman.

"For instance, such a sub-contractor is apparently liable under section 4 only in case of personal negligence or wilful act, or under the Employers' Liability Act: while a stranger would be liable under section 6 only in case of wilful act or negligence; and a sub-contractor sued under the Employers' Liability Act would be entitled to any defence open to him under that Act, while a stranger would be entitled to any defence open to him at common law, such defences including contributory negligence on the part of the workman, a very much wider term than the 'serious and wilful misconduct' on which alone an employer can rely under section 1, sub-sect. 2 (*c*); and it is difficult to see how a sub-contractor or stranger can be compelled to submit these questions to the judge or arbitrator, and deprived of his right to have them decided by a jury, or what power the judge or arbitrator has to decide them at or after the arbitration.

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"The third party procedure is for these reasons expressly limited so as to make it bind the third party only as to the validity of the award against the employer in respect to matters which under the Act the judge or arbitrator has power to decide as between the workman and the employer, and not as to the third party's liability to indemnify the employer.

"There seems, however, to be no reason why the judge or arbitrator should not, if the third party and the respondent consent, decide the question of the third party's liability; and provision is therefore made by Rule 22 for the decision of this question by consent."

R. 22 (1) (*contd.*).

(2.) Provided that, with the consent of the respondent and the third party,

(*a.*) If the arbitration results in an award in favour of the applicant, or is finally decided otherwise than by an award, and the third party admits his liability to indemnify the respondent, the judge may, on application made to him at or after the hearing of the arbitration or the final decision thereof, make such award as the nature of the case may require in favour of the respondent against the third party; provided that execution thereon shall not be issued without leave of the judge or registrar until after satisfaction by the respondent of the award against him, or the amount recovered against him; or [*Conf.* Order XI., Rule 2.]

(*b.*) The judge may, on an application for directions, order any question as to the liability of the third party to make the indemnity claimed to be settled, as between the respondent and the third party, by arbitration after the arbitration between the applicant and the respondent, and may on such subsequent arbitration make such award as the nature of the case may require in favour of either party against the other. [*Conf.* Order XI., Rule 3.]

(*c.*) In any such case the judge may decide all questions of costs as between the respondent and the third party, and may order either of such parties to pay the costs of the other (including any costs payable by such party to any other party to the arbitration), or give such directions as to such costs as the justice of the case may require. [*Conf.* Order XI., Rule 4.]

Third party procedure where employer is applicant.

*22*a*. The provisions of Rules 19 to 22 shall, with the necessary modifications, apply to a case in which an employer who has filed a request for arbitration claims to be entitled to indemnity over against any person not a party to the arbitration.

Claim to indemnity as between respondents. [*Conf.* Order XI., Rule 5.]

23. (1.) Where a respondent claims to be entitled to indemnity against any other respondent, a like notice may be issued and the like procedure may be adopted for the determination of questions between the respondents as might be issued and adopted if such last-mentioned respondent were a third party.

See Act, sect. 4.

(2.) Provided that where both the undertakers as defined by the Act and a contractor with them are made respondents to an arbitration, and it is decided in such arbitration that the contractor is liable to pay

* Added by the Workmen's Compensation Rules, 1900.

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R. 23 (2) (*contd.*).

compensation under the Act, the judge may, without any consent or admission of liability on the part of such contractor, make an award in accordance with paragraph (2) (*a*) of the last preceding rule in favour of the undertakers against the contractor.

Note.—It was decided in *Appleby* v. *Horseley Co.* (No. 2), [1899] 2 Q. B. 512; 68 L. J. Q. B. 894, that where both the undertakers and the contractor are made respondents, the undertakers, if they desire to make a claim in the proceedings for indemnity against the contractor, must give the five days' notice required by Rule 19.

(3.) Nothing herein contained shall prejudice the rights of the applicant against any respondent.

Procedure on Arbitration.

Procedure before judge.

24. (1.) Subject to the special provisions of these Rules, the procedure in an arbitration shall be the same as the procedure in an action commenced in the County Court by plaint and summons in the ordinary way, and determined by the judge without a jury; and the statutory provisions and rules for the time being in force relating to such actions shall, with the necessary modifications, apply to such arbitration accordingly; and in the application of such provisions and rules the applicant's request for arbitration shall be deemed to be a summons with particulars annexed, the day fixed for proceeding with the arbitration shall be deemed to be the return day, and the applicant and respondents shall be deemed to be plaintiff and defendants respectively.

"**With the Necessary Modifications.**"—See note on Rule 64, *post* p. 144.

Burden of proof of fact not admitted.

*24. (2.) Provided that the burden of proof of any facts which are not admitted shall be the same, whoever the party may be by whom the request for arbitration is filed.

Appointment of Medical Referees under Schedule II., Paragraph 13.

Appointment of medical referees under Act, Sched. 2, par. 13.

25. (1.) Subject to and in accordance with regulations made by the Secretary of State and the Treasury under paragraph 13 of the second schedule to the Act, the judge may, at the hearing of an arbitration, appoint any legally qualified medical practitioner appointed by the Secretary of State for the purpose of the Act (in these Rules called a "medical referee"), to report on any matter which seems material to any question arising in the arbitration.

(2.) Regulations made under the said paragraph shall, so far as they affect the County Court or an arbitrator appointed by the judge of the County Court, and proceedings in the County Court or before any such

* Added by the Workmen's Compensation Rules, 1900.

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arbitrator, be deemed to be Rules of Court, and shall have effect accordingly. R. 25 (2) (*contd.*).

(3.) When any appointment is made as aforesaid, the judge may, subject to and in accordance with such regulations, order the injured workman to submit himself for examination by the medical referee; and it shall be the duty of the workman, on being served with such order, to submit himself for examination accordingly.

Award.

26. (1.) The award of the judge on any arbitration shall be in writing, and shall be sealed, filed, and served on all persons affected thereby, and shall be enforceable in the same manner as a judgment or order of the Court. Award. Form 14.

(2.) The judge shall have power at any time to correct any clerical mistake or error in such award arising from any accidental slip or omission. 52 & 53 Vict. c. 49, sect. 7 (c).

Note.—Cf. O. XXVIII., r. 11, R.S.C.—In *Chessum & Sons* v. *Gordon*, [1901] 1 K. B. 694; 70 L. J. K. B. 334, a referee made his award for plaintiff for a certain sum with costs to be taxed. The plaintiff took up the award and paid the referee his fees, but omitted to include this item in the judgment which was drawn up in his favour. The defendant having, under this judgment, paid to the plaintiff only the amount of the debt and costs, it was held that there had been an "accidental slip or omission," which could be corrected under the rule referred to by including the amount of the referee's fees. So in the case of *Fritz* v. *Hobson*, (1872) 14 Ch. D. 542, where the counsel for the successful party had, at the trial of an action, forgotten to ask for the costs of a previous motion, it was held that, under the same rule, the judgment might be corrected so as to include such costs.

Proceedings before Arbitrator appointed by Judge.

Appointment of Arbitrator by Judge.

27. With respect to the appointment of an arbitrator by the judge, the following provisions shall apply:— Appointment of arbitrator by judge.

(*a.*) If with respect to any Court the Lord Chancellor, by general order, authorises the settlement by an arbitrator appointed by the judge of matters which, in default of such authorisation, would be settled by the judge, the judge may from time to time, on an application being made for the settlement of any matter, either settle the same himself, or he may, with the approval of the Lord Chancellor, appoint by writing under his hand, and filed in the court, an arbitrator to settle such matter.

(*b.*) If with respect to any Court the Lord Chancellor makes no such general order as aforesaid, then, on an application being made for the settlement of any matter, the judge may (if from the state of business in the court, or for any other reason, he is unable to settle such matter within a reasonable time) apply to the Lord Chancellor to authorise the settlement of such matter by an arbitrator appointed by the judge.

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R. 27 (*contd.*).

(*c.*) If the Lord Chancellor does not grant such authority, the judge shall proceed to settle the matter in accordance with the Act and these rules.

(*d.*) If the Lord Chancellor grants such authority, the judge may, with the approval of the Lord Chancellor, appoint, by writing under his hand, and filed in the court, an arbitrator to settle such matter.

Act, Sched 2, par. 7.

(*e.*) Where pursuant to paragraph 7 of the second schedule to the Act a judge of the High Court appoints a new arbitrator in the place of an arbitrator appointed by the judge, the party obtaining such appointment shall lodge with the registrar the order appointing such arbitrator, or a duplicate or copy thereof under the seal of the High Court; and thereupon the registrar shall act and the arbitration shall proceed in the same manner as if such arbitrator had been appointed by the judge.

Fixing Day for Arbitration.

Fixing day and place for proceedings before arbitrator.

28. Where any matter is to be settled by an arbitrator, the judge shall return the copy of the request for arbitration to the registrar, with the appointment of such arbitrator, to be transmitted to the arbitrator; and the registrar shall transmit the copy of the request and a copy of the appointment to the arbitrator, who shall, as soon as conveniently may be, appoint a day and hour for proceeding with the arbitration, in accordance with Rule 13, and the provisions of that rule as to the place where an arbitration shall be held shall apply. Provided, that where the arbitration is to be held at the place where the Court is held, the day appointed for the arbitration shall, if possible, be one on which the Court or other suitable accommodation in the Court House will be available for the arbitration.

Procedure before Arbitrator.

Procedure before arbitrator.

29. (1.) On the day for proceeding with an arbitration being fixed the registrar shall proceed according to Rule 14, and thenceforward the arbitration shall proceed in the same manner as an arbitration before the judge; and these Rules shall apply and the officers of the Court shall act accordingly, with the substitution of the arbitrator for the judge.

(2.) Provided that—

(*a.*) In any case coming within the provisions of paragraph 5 (*a*) or paragraph 5 (*b*) (i.) of Rule 18, or in any other case in which, after an arbitrator has been appointed, but before the day fixed for proceeding with the arbitration, the parties agree upon an award, the judge may, on application made to him in or out of court on behalf of or with the consent of all parties, settle the matter himself; and thereupon the functions of the arbitrator as to such matter shall cease, and the registrar shall forthwith inform him that the matter has been settled; and

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(*b*.) Any application for the enforcement of or for staying proceedings on an award, which would in the case of an award made by the judge be required to be made to the judge, shall, in the case of an award made by an arbitrator, be in like manner made to the judge. R. 29 (2) (*contd*.).

Submission of Question of Law by Arbitrator to Judge.

30. (1.) Where an arbitrator (whether agreed on by the parties or appointed by the judge) submits any question of law for the decision of the judge under paragraph 4 of the second schedule to the Act, such submission shall be in the form of a special case. Submission of question of law by arbitrator to judge. Act, Sched. 2, par. 4.

(2.) Such case shall be intituled in the matter of the Act and of the arbitration, and shall be divided into paragraphs numbered consecutively, and shall state concisely such facts and documents as may be necessary to enable the judge to decide the questions of law raised thereby. Upon the argument of such case the judge and the parties shall be at liberty to refer to the whole contents of such documents, and the judge shall be at liberty to draw from the facts and documents stated in the case any inference, whether of fact or of law, which might have been drawn therefrom if proved at the hearing of an arbitration. Statement of case.

(3.) Such case shall be signed by the arbitrator and sent to the registrar, who shall transmit the same to the judge, and the judge shall as soon as conveniently may be appoint a day and hour for hearing the case, and instruct the registrar to give notice thereof forthwith to the parties. Such day shall be so fixed as to allow such notice to be given ten days at least before the day fixed for the hearing, unless the judge shall, with the consent of all parties, fix an earlier day. Fixing day for hearing. [Order XL., Rule 5.] Form 15.

(4.) The registrar shall, on the application and at the cost of any party, furnish him with a copy of the case. Copies of case.

(5.) On the hearing of the case the judge may, after deciding the question submitted to him, remit the case with a memorandum of such decision to the arbitrator, for him to proceed thereon in accordance with such decision: or if the decision of the judge on the question submitted to him disposes of the whole matter, he may himself make an award in the arbitration in accordance with such decision. Power of judge on hearing of case.

(6.) The judge may remit the case to the arbitrator for re-statement or further statement.

(7.) The judge shall have the same power over the costs of a special case as he has over the costs of an arbitration, or he may direct that such costs shall be dealt with as costs attending the arbitration; and the provisions of the Act and these Rules as to such costs shall apply accordingly. Costs of special case.

Subsequent Arbitration in Matter already settled by Arbitrator.

31. Where an award has been made in any matter by an arbitrator appointed by the judge, any subsequent proceedings by way of arbitration in relation to any matter settled by such award shall be taken before the Subsequent arbitration in matter settled by arbitrator.

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R. 31 (*contd.*).

same arbitrator, if his services are available for the purpose of such proceedings, unless the judge shall otherwise direct.

Appearance of Parties in Arbitration.

Appearance of parties.

32. (1.) A party to an arbitration under the Act may appear—

(*a.*) In person:

Conf. County Courts Act, 1888, sect. 72.

(*b.*) By any solicitor who would be entitled to appear for such party in an action in the County Court:

(*c.*) By counsel:

Or, by leave of the judge or arbitrator, a party may appear—

(*d.*) By a member of his family:

(*e.*) By a person in the permanent and exclusive employment of such party:

(*f.*) In the case of a company or corporation, by any director of the company or corporation, or by the secretary or any other officer or any person in the permanent and exclusive employment of the company or corporation:

(*g.*) By any officer or member of any society or other body of persons of which such party is a member or with which he is connected; or

(*h.*) Under special circumstances, by any other person.

Conf. County Courts Act, 1888, sect. 72.

(2.) No person other than a solicitor who appears or acts on behalf of any party in any arbitration under the Act shall be entitled to have or recover any fee or reward for so appearing or acting, other than such travelling expenses and (in the case of a workman or a member of his family) allowance for time (if any) as shall be allowed by the judge or arbitrator: provided that nothing in these rules contained shall affect the right of counsel to appear or act in any arbitration, or the right of any solicitor to recover costs in respect of his employment of counsel to appear or act as aforesaid.

Costs.

Costs.

33. (1.) Any costs of and incident to an arbitration and the proceedings connected therewith directed by the judge or by an arbitrator (whether agreed on by the parties or appointed by the judge) to be paid by one party to another shall, in default of agreement between the parties as to the amount of such costs, be taxed according to such one of the scales of costs applicable to actions in the County Court as the judge or arbitrator shall direct; and in default of such direction shall be taxed according to the scale which would be applicable if the proceeding had been an action in the County Court: and the statutory provisions and rules for the time being in force as to the allowance and taxation of costs in such actions shall apply accordingly.

*(1*a.*) Proceedings on an arbitration shall be within Order LA., Rule 7.

Note.—The rule and the items therein referred to are as follows:—

Allowance of special

"7. The judge may, in his discretion, in any action under the Employers'

* Added by the Workmen's Compensation Rules, 1900.

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Liability Act, any action or matter remitted from the high court, any action or matter commenced under the admiralty or equity jurisdiction of the court, or any action of ejectment or in which title to any corporeal or incorporeal hereditaments comes in question, order that any of the following items mentioned in the scale of costs shall be allowed to the party in whose favour the order is made, in addition to or in substitution for, as the case may be, the costs to which he would otherwise be entitled, viz., items 31, 70, 86, and 93.

R. 33 (1a) (*contd.*).

Items in certain cases.

	Scale A.			Scale B.			Scale C.		
	£	s.	d.	£	s.	d.	£	s.	d.
29. Examining and taking minutes of evidence where no counsel employed, for each witness afterwards allowed on taxation	0	2	0	0	3	4	0	6	8
30. If exceeding six folios, for each additional folio	0	0	6	0	1	0	0	1	0
31. In the cases mentioned in Order 50A, Rule 7, where no counsel employed, if the judge so orders, in addition to items 29 or 30, for preparation of minutes of fact or argument . .	—			1	1	0	2	2	0
69. At court, conducting cause without counsel	0	15	0	1	1	0	1 to 2	1 to 2	0 to 0
NOTE.—*The minimum must not be exceeded if the action is undefended, or there is no real contest.*									
70. Or, in the cases mentioned in Order 50A, Rule 7, by order of the judge, there may be allowed instead of last item .	1	1	0	2	2	0	3	3	0
FEES TO COUNSEL.									
NOTE.—*Fees to counsel are not to be allowed unless the payment of them is vouched by the signature of counsel.*									
85. With brief, sum paid not to exceed .	2	4	6	3	5	6	5	10	0
NOTE.—*The maximum is not to be allowed as of course, but in assessing the fee to be allowed, the length of the brief, the documents (if any) to be perused and considered, the number of the witnesses, and the difficulties of fact or law involved must be considered.*									
86. In the cases mentioned in Order 50A, Rule 7, where there is no local bar in the court town, or within twenty miles thereof, a further fee may be allowed by order of the judge, if in his opinion the maximum fee allowable on the brief is insufficient, not exceeding .	—			2	4	6	2	4	6
93. In the cases mentioned in Order LA, Rule 7, for settling petition, particulars, statement of defence, interrogatories, or other matters required in the course of any action or matter, if allowed by order of the judge . .	—			1	3	6	1 to 2	3 to 4	6 to 6

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R. 33 (2).

(2.) Where the subject matter of the arbitration is not a capital sum, the judge or arbitrator shall determine what, for the purpose of the allowance and taxation of costs, shall be considered to be the amount of the subject matter of the arbitration.

(3.) The judge or arbitrator, in dealing with the question of costs, may take into consideration any offer of compensation proved to have been made on behalf of the employer.

Note.—In *Welland* v. *The Great Western Railway Co.*, (1900) 16 T. L. R. 297, it was held that, under this paragraph, a judge was entitled to fix the costs of the applicant at £5, on the ground that he had refused to accept from the employers the weekly payment that was ultimately awarded to him.

(4.) Where any workman submits himself for examination to a medical referee under paragraph 11 of the first schedule to the Act, and the certificate of the referee is used in any subsequent arbitration, any reasonable travelling and other expenses incurred by the workman in obtaining such certificate (if not otherwise provided for) may, by order of the judge or arbitrator, be allowed as costs in the arbitration.

(5.) Where a workman is ordered to submit himself for examination by a medical referee appointed to report under paragraph 13 of the second schedule to the Act, any reasonable expenses incurred by such workman in travelling to attend on such referee for examination may, by order of the judge or arbitrator, be allowed as costs in the arbitration.

Taxation of costs awarded by arbitrator agreed on by parties.

34. Where any costs are awarded by an arbitrator agreed on by the parties, it shall be the duty of the registrar of the court in which a memorandum of the decision of the arbitrator is recorded pursuant to paragraph 8 of the second schedule to the Act, on application made to him, to tax such costs, and to enter in the register the amount of such costs allowed on taxation; and such entry shall be deemed to be part of such memorandum, and shall be enforceable accordingly.

As to authority of solicitor to receive costs payable by adverse party.

34*a*.* Where any party to whom costs are awarded acts by a solicitor, such solicitor shall have the same authority to take out of court or receive any sum paid into court or payable in respect of such costs by the party against whom such costs are awarded as he would have if such costs were awarded in an action.

Duty of Judge as to taking Notes.

Note to be taken, on request, of question of law raised, etc., and copy furnished.

[*Conf.* County Courts Act, 1888, ss. 120, 121.]

35. At the hearing of any arbitration or special case the judge, at the request of any party, shall make a note of any question of law raised, and of the facts in evidence in relation thereto, and of his decision thereon, and of his decision in the arbitration or on the hearing of the case: and he shall, at the expense of any party to such arbitration or case, furnish a copy of the note so taken to or allow a copy of the same to be taken by or on behalf of such party, and shall sign such copy, whether a notice of motion by way of appeal has been served or not.†

* Added by the Workmen's Compensation Rules, 1899.

† It is the practice of the Court of Appeal to confine the parties to an appeal with som

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Appeals. R. 36.

36. Appeals under paragraph 4 of the second schedule to the Act shall be had in accordance with the provisions of the Rules of the Supreme Court relating thereto.

Appeals Act, Sched. 2, par. 4. [Order XXXII., Rule 1.]

Note.—The following are the Rules of the Supreme Court (July, 1898) above referred to:—

"20. The following provisions shall apply to appeals to the Court of Appeal from decisions of judges of the County Courts on questions of law under the Workmen's Compensation Act, 1897:—

O. LVIII., r. 20. Appeals under Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), Sched. 2, par. 4.

"(*a*) Every such appeal shall be by notice of motion in accordance with O. LIX. r. 10; and such notice of motion shall be served, and the appeal set, down under O. LVIII., r. 8, within the time limited by O. LIX., r. 12.

"(*b*) It shall be the duty of the party appealing to apply to the judge of the County Court for a signed copy of the note made by him of any question of law raised before him, and of the facts in evidence in relation thereto, and of his decision thereon, and of his decision on the question or matter submitted to him, and to furnish such copy for the use of the Court of Appeal; and such copy shall be used and received at the hearing of the appeal. If such notes are not produced the Court of Appeal shall have power to hear and determine the appeal upon any other evidence or statement of what occurred before the judge of the County Court, which the Court of Appeal may deem sufficient.

"(*c*) Order LIX., rr. 14 and 16, shall apply to any such appeal, with the substitution of the Court of Appeal for the High Court.

"(*d*) Subject to the foregoing provisions, the rules for the time being in force with respect to appeals from the High Court to the Court of Appeal shall, so far as practicable, apply to and govern appeals under the said Act to the Court of Appeal."

The following are the Rules referred to in the above Rules of the Supreme Court:—

"10. Every such appeal shall be by notice of motion, and no rule *nisi* or order to show cause shall be necessary. The notice of motion shall state the grounds of the appeal, and whether all or part only of the judgment, order, or finding is complained of. The notice of motion shall be an eight days' notice, and shall be served on every party directly affected by the appeal entered."

O. LIX., r. 10. Appeal to be by notice of motion. Form, length, and service of notice.

"8. The party appealing from a judgment or order shall produce to the proper officer of the Court of Appeal the judgment or order or an office copy thereof, and shall leave with him a copy of the notice of appeal to be filed, and such officer shall thereupon set down the appeal by entering the same in the proper list of appeals, and it shall come on to be heard according to its order in such list, unless the Court of Appeal or a judge thereof shall otherwise direct, but so as not to come into the paper for hearing before the day named in the notice of appeal."

O. LVIII., r. 8. Setting down appeal.

"12. The notice of motion shall be served and the appeal entered within twenty-one days from the date of the judgment, order, or finding complained of: such period shall be calculated from the time at which the judgment or order is signed, entered, or otherwise perfected, or from the time at which the finding or any refusal is made or given."

O. LIX., r. 12. Time for service of notice of motion and entry of appeal.

"14. The appeal shall not operate as a stay of proceedings under the decision appealed from unless the inferior court shall so order or unless within ten days after the decision a deposit shall be made of or security given to the satisfaction

O. LIX., rr. 14 and 16.

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strictness to the facts and points of law disclosed by the judge's note. It should be borne in mind, therefore, that the judge is under no obligation to take a note of any point or the facts in relation to it, except at the request of one of the parties, and any point or fact on which it is intended to rely in the event of an appeal should be expressly brought to his notice for this purpose. See *Beavan* v. *Crawshay Bros.*, (1901) 18 T.·L. R. 17.

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R. 36 (*contd.*).

When appeal may operate as a stay of proceedings.

Powers of High Court as to appeals.

of such inferior court for a sum to be fixed by the said court, not exceeding the amount of the money or the value of the property affected by the judgment order or finding appealed from."

"16. The High Court shall have power to extend the time for appealing, or to amend the grounds of appeal, or to make any other order, on such terms as the court shall think just, to ensure the determination on the merits of the real questions in controversy between the parties."

"The Rules for the Time being in Force with respect to Appeals from the High Court to the Court of Appeal."—These Rules are contained in O. 58 of the Rules of the Supreme Court. (See the "Annual Practice.") In so far as they are not covered by the rules above set out, they relate to matters of ordinary procedure, and the ordinary powers of the Court. The only rule on which any question has arisen under this Act, is that which is the subject of the next note.

Security for Costs.—By O. 58, r. 15, of the Rules of the Supreme Court, it is provided that—"such deposit or other security for the costs to be occasioned by any appeal shall be made or given as may be directed under special circumstances by the Court of Appeal."

In *Hall* v. *Snowden, Hubbard & Co.*, [1899] 1 Q. B. 593; 68 L J. Q. B. 363, it was decided that the ordinary rule of practice of the Court of Appeal as to ordering security for the costs of an appeal was applicable to appeals under this Act. *Per* SMITH, L.J.: "The Legislature has in no way enacted that the ordinary rule of practice of this Court as to security for the costs of an appeal should be abrogated in such cases. The ordinary rule of this Court is that, except in applications for new trials, when the respondent can show that the appellant, if unsuccessful, would be unable through poverty to pay the costs of the appeal, an order for security for costs is made." (Cf. *Rees* v. *Richards*, reported in the *Times*, Aug. 8, 1899.) An appeal under this Act is *not* in the nature of a motion for a new trial (*Harwood* v. *Abrahams*, [1901] 2 K. B. 304). The fact that the case is being conducted on behalf of the appellant by a trade union, does not affect the question; and in such a case, security for costs will be ordered to the ordinary amount (*McLaughlin* v. *Clayton*, the *Times*, Feb. 28, 1899) even though the trade union has already paid the costs of the arbitration. (*Haddock* v. *Humphreys*, the *Times*, Aug. 1, 1899.) *Per* SMITH, L.J.: "The fact that the union has paid the costs in the County Court is no ground for supposing that they will pay them in the Court of Appeal."

The Court, however, has a discretion in the matter, and, in a case in which the poverty of the appellant was due to the accident (*Skeggs* v. *Keen*, the *Times*, May 16, 1899), it considered that under the circumstances it would not be just to order security to be given, and refused to make an order.

So where an award was made in favour of the employers, but execution stayed pending an appeal, the Court refused to order security for costs on the ground that the County Court Judge had in effect, by staying execution, invited the parties to go to the Court of Appeal to have a point of law decided (*Hubball* v. *Everitt & Sons*, (1900) 16 T. L. R. 168).

If the workman appeals in *forma pauperis*, security for costs will not be ordered; but, in order to do this, he must be able to swear an affidavit "that he is not worth £25, his wearing apparel and the subject matter of the appeal only excepted," and he must obtain from counsel an opinion (for which no fee can be charged) that he has reasonable grounds for proceeding. (See Rules of the Supreme Court, O. 16, rr. 22–31, and cf. *Ex parte Goldberg*, [1893] 1 Q. B. 417; 62 L. J. Q. B. 127.)

Deposit of order of Court of Appeal with registrar, and procedure thereon.

37. (1.) When the Court of Appeal has given judgment on any appeal, any party may deposit the order of the Court of Appeal, or an office copy thereof, with the registrar: and the registrar shall file such order or copy, and shall transmit a copy thereof to the judge: and such order shall have the same effect as if it had been a decision of the judge.

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R. 37 (2).

[Order XXXII., Rules 2, 4,]

(2.) If such order has the effect of an award or decision in the matter in favour of any party, such order shall be served and recorded, and may be proceeded on, in the same manner as if it had been an award or decision of the judge.

(3.) If such order be to the effect that an award be made or a decision given in favour of any party, the judge shall make such award or give such decision accordingly.

(4.) If such order directs or involves a re-hearing or further hearing of the arbitration or special case, the judge shall, as soon as conveniently may be, appoint a day and hour for such re-hearing or further hearing, and shall instruct the registrar to give notice thereof forthwith to the parties.

(5.) Generally the judge shall make such award or give such decision, and give such directions and take or direct to be taken such proceedings in the matter, as may be necessary to give effect to the order of the Court of Appeal.

Memorandum under Schedule II., Paragraph 8.

Memorandum to be sent to registrar.

Act, Sched. 2, par. 8.

Form 16.[1]

38. (1.) The memorandum as to any matter decided by a committee or by an arbitrator or by agreement, which is by paragraph 8 of the second schedule to the Act required to be sent to the registrar, shall be intituled in the matter of the Act, and shall be left at the office of the registrar, or sent by post by registered letter addressed to the registrar at his office, as soon as may be after the matter has been decided.

(2.) Where the matter is decided after a medical referee has been appointed to report on any matter under paragraph 13 of the said second schedule, a copy of the report of such referee shall be annexed to the memorandum and recorded therewith; and if such referee attended any proceeding in the arbitration, it shall be so stated in the memorandum.

Authentication and record of memorandum of decision of committee or arbitrator.

39. If the memorandum purports to be a memorandum of a decision of a committee or an arbitrator, and to be signed by the chairman and secretary of the committee, or by the arbitrator, the registrar shall record the memorandum without further proof of its genuineness; and it shall be the duty of the committee or arbitrator, as soon as may be after the decision, to draw up such memorandum and to sign the same or cause it to be signed as aforesaid, and to leave or send the same as aforesaid, or to deliver the same to some person interested, to be by him so left or sent.

Authentication and record of memorandum of decision arrived at by agreement.

40. If the memorandum purports to be a memorandum of a decision arrived at by agreement, then if such memorandum purports to be signed by or on behalf of all parties to such decision, the registrar shall record it without further proof.

Inquiry as to genuineness if such memorandum signed by one party only.

Form 17.

41. If the memorandum purports to be signed by or on behalf of one or some only of the parties, the registrar may record the same; or he may, before recording the same, send a copy thereof to the other parties affected, and request them to inform him whether the memorandum is genuine.

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R. 42.

Proceedings thereon.

42. If all the parties admit the genuineness of the memorandum, or do not dispute it within a reasonable time, the registrar shall record it without further proof.

Notice if genuineness disputed.

Forms 18, 19.

43. If any party disputes the genuineness of the memorandum, the registrar shall inform the party by whom it was left with or sent to him of such dispute, and that the memorandum will not be recorded except with the consent in writing of the party disputing the same, or by order of the judge.

Application to judge to order memorandum to be recorded.

44. If the consent mentioned in the last preceding rule cannot be obtained, the party by whom the memorandum was left or sent may apply to the judge to order the same to be recorded.

Proceedings for Record of Memorandum or Rectification of Register.

Proceedings on application for record of memorandum or rectification of register. Form 20. *See* Order XII., Rule 11*a*.

45. The following provisions shall apply to an application for an order that a memorandum be recorded, or an application to the judge to rectify the register pursuant to paragraph 8 of the second schedule to the Act.

(*a*.) The application shall be made in court on notice in writing, stating the relief or order which the applicant claims.

(*b*.) Such notice shall be filed with the registrar, and copies thereof shall be served—

(i.) in the case of an application for an order that a memorandum be recorded, on the party disputing such memorandum;

(ii.) in the case of an application to rectify the register, on every party who would be affected by such rectification, subject to the provisions of these Rules as to the parties to an arbitration;

or on the solicitor of such party, ten clear days at least before the hearing of the application, unless the judge or registrar shall give leave for shorter notice.

(*c*.) On the hearing of the application, witnesses may be orally examined in the same manner as on the hearing of an action.

(*d*.) On the hearing of the application the judge may make such order or give such directions as may be just.

(*e*.) The provisions of the Act and these Rules as to the costs of an arbitration before the judge shall apply to any such application.

Costs of Solicitor or Agent under Schedule II., Paragraph 12.

Application to determine costs payable to solicitor or agent. Act, Sched. 2, par. 12.

46. The following provisions shall apply to an application under paragraph 12 of the second schedule to the Act for the determination of the amount of costs to be paid to a solicitor or agent:—

(*a*.) Such application may be made to the judge or arbitrator at or immediately after the hearing of the arbitration.

(*b*.) If not so made, such application may be made at a subsequent date, but in that case it shall, if the arbitration was before the judge or before an arbitrator appointed by him, be in every case made to the judge.

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R. 46 (*contd.*).

Form 21.

(*c.*) The application, if made to the judge under the last preceding paragraph, shall be made in court on notice in writing in accordance with Rule 45.

*(*d.*) Such notice shall be served on the person for whom the solicitor or agent acted in accordance with the said rule, and the provisions of the said rule shall apply to the proceedings on such application.

(*e.*) On the hearing of any application under this rule, the judge or arbitrator may award costs to the solicitor or agent, and may make an order declaring such solicitor or agent to be entitled to recover such costs from the person for whom he acted, or to be entitled to a lien for such costs on any sum awarded as compensation to such person, or to be entitled to deduct such costs from any such sum, or may make such order or give such directions as may be just.

(*f.*) Any costs awarded to a solicitor or agent on any such application shall, in default of agreement between the parties as to the amount of such costs, be taxed according to such one of the scales of costs applicable to actions in the County Court as the judge or arbitrator shall direct; and in default of such directions such costs shall be taxed according to the scale which would be applicable if the proceeding had been an action in the County Court; and the statutory provisions and rules for the time being in force as to the allowance and taxation of costs in such actions shall apply accordingly.

(*g.*) Where the subject matter of the arbitration is not a capital sum, the judge or arbitrator shall determine what, for the purpose of the allowance and taxation of such costs, shall be considered to be the amount of the subject matter of the arbitration.

47. Where an order is made by the judge or an arbitrator awarding costs to a solicitor or agent, and declaring such solicitor or agent to be entitled to recover such costs from the person for whom he acted, or to be entitled to a lien for such costs on any sum awarded as compensation to such person, or to be entitled to deduct such costs from any such sum, the following provisions shall apply: †

(*a.*) The registrar shall, on application made to him, tax such costs.

(*b.*) A copy of the order, and, when the amount to which such solicitor or agent is entitled has been ascertained by taxation, a memorandum of such amount, shall, at the request and cost of the solicitor or agent, be issued by the registrar for service on the party liable to pay the sum awarded as compensation; and service thereof may be effected on such party in accordance with Rule 15.

(*c.*) A memorandum of such order, and when such amount has been ascertained a memorandum of such amount, shall be recorded in the register in which the memorandum or award under which the

* This and the next three succeeding paragraphs were substituted for what was originally paragraph (*d*) of this Rule by the Workmen's Compensation Rules, 1899.

† Substituted for what was originally the first paragraph of this Rule by the Workmen's Compensation Rules, 1899.

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R. 47 (*contd.*).

sum awarded as compensation is payable is recorded, and such last mentioned memorandum or award shall have effect subject to such order and memorandum.

(*d.*) The party liable to pay such compensation shall on demand pay to the solicitor or agent the amount to which he is entitled, but so that such party shall not be liable to pay any amount in excess of that which he is liable to pay for compensation, or to pay such amount by any other instalments than those by which he is liable to pay such compensation.

(*e.*) If the party liable to pay such compensation fails on demand to pay any amount which he is liable to pay to such solicitor or agent, the judge may, on application made to him on notice to such party in accordance with Rule 45, and on proof of the order having been served on and demand for payment made to such party, order such party to pay such sum; and in default of payment the judge may order execution to issue to levy such amount.

(*f.*) Payment made by or execution levied on the party liable to pay such compensation shall be a valid discharge to him, as against the party entitled to such compensation, to the amount paid or levied.

*(*g.*) Where the sum awarded as compensation has been paid into Court, the amount to which the solicitor or agent is entitled shall be paid to him out of such sum.

Certificate under Section 1, *Sub-section* 4.

Certificate under Act, sect. 1, sub-sect. 4. Form 22.

48. (1.) Where an action is brought in the County Court to recover damages independently of the Act for injury caused by any accident, and the court proceeds under sub-section 4 of section 1 of the Act, the certificate given by the court shall be according to the form in the Appendix.

(2.) The registrar shall, on receiving a certificate given by any other court under the said sub-section, record the same in like manner as if such certificate were a memorandum as to a matter decided by an arbitrator sent to the registrar pursuant to paragraph 8 of the second schedule to the Act.

Execution.

Execution. Form 23. [*Conf.* Order XXV., Rule 7.]

49. (1.) When a party liable to pay compensation or costs under any award, memorandum, or certificate, has made default in payment of the amount awarded, or where payment is to be made by instalments, of any instalment, execution may issue against his goods without leave for the amount in payment of which he has made default.

(2.) Where such sum is not payable into court, the party applying for execution shall satisfy the registrar, by affidavit or otherwise, as to the amount in payment of which default has been made.

* Added by the Workmen's Compensation Rules, 1899.

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Proceedings under Debtors' Act, 1869, *s.* 5.

Proceedings under Debtors' Act, 1869. 32 & 33 Vict. c. 62, s. 5.

*49*a*. (1.) Where proceedings by way of judgment summons under section 5 of the Debtors' Act, 1869, are taken against a party liable to pay compensation or costs under any award, memorandum, or certificate, who has made default in payment of the amount awarded, or, where payment is to be made by instalments, of any instalment, the County Court Rules for the time being in force as to the committal of judgment debtors shall, with any necessary modifications, apply to such proceedings; provided, that the court shall not alter the terms or mode of payment of any sum to become payable in future under any award, memorandum, or certificate, otherwise than by consent, or under paragraph 12 of the second schedule to the Act.

(2.) Where the amount in payment of which default has been made is not payable into court, the party applying for a judgment summons shall satisfy the court, by affidavit, as to the amount in payment of which default has been made.

(3.) A judgment summons issued under this rule shall be according to the form 23A in the Appendix.

Other Proceedings for Enforcement of Award, Memorandum, or Certificate.

Other proceedings for enforcement of award, etc.

49*b*. The County Court Rules for the time being in force as to proceedings for the enforcement of or the recovery of money due under judgments or orders of the County Court otherwise than by execution or committal shall, with the necessary modifications, apply to proceedings for the enforcement of or the recovery of money due under any award, memorandum, or certificate.

Suspension of Proceedings or Weekly Payments on Refusal to Submit to Examination under Paragraph 3 *or Paragraph* 11 *of Schedule I.*

Application to stay proceedings before or after award on refusal of workman to submit to examination under Act. Sched. 1, par. 3, or par. 11.

Form 24.

50. (1.) In any case in which an arbitration is pending, or an award has been made or a memorandum recorded or a certificate given, and the employer or any person by whom the employer is entitled to be indemnified alleges that the workman who claims or has been awarded compensation refuses to submit himself for examination in accordance with paragraph 3 or paragraph 11 of the first schedule to the Act, or obstructs such examination, such employer or other person may apply to the judge or arbitrator to stay proceedings in the arbitration or to suspend the weekly payments awarded until such examination has taken place.

(2.) Such application shall be made in or out of court in accordance with Rule 45, and the provisions of the said rule shall apply to the proceedings on such application, with the following modifications:—

* Added by the Workmen's Compensation Rules, 1900.

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R. 50 (2) (*contd.*).

(*a.*) The notice shall be served five clear days at least before the hearing of the application, unless the judge or registrar shall give leave for shorter notice; and

(*b.*) Where the application is made after award, it shall in every case be made to the judge.

Applications against Insurers under Section 5.

Application against insurers under sect. 5. [*Conf.* Order XXVIA., Rule 1.] Form 25.

51. Where a workman claims to be entitled under s. 5 of the Act to a charge on any sum to which any employer is entitled from insurers, such workman may, upon lodging with the registrar of the court in which the memorandum or award or certificate under which the employer is liable to pay compensation is recorded an affidavit made by the applicant or his solicitor, setting forth the circumstances in which the applicant claims to be entitled to such charge, enter a plaint to obtain payment of such sum, or so much thereof as may be sufficient to satisfy the compensation which the employer is liable to pay to the workman.

Summons thereon. Form 26. [*Conf.* Order XXVIA., Rule 1.]

52. Thereupon a summons calling upon the insurers to show cause why they should not pay into court the sum to which the employer is entitled from them, or so much thereof as may be sufficient to satisfy the compensation which the employer is liable to pay to the workman, shall be issued by the registrar for service on the insurers.

Service of summons, and procedure thereon. [*Conf.* Order XXVIA.] Forms 28, 29.

53. Such summons shall be served in accordance with the provisions of Rule 15, and when so served shall bind in the hands of the insurers all sums due, owing, or accruing from them to the employer in respect of the compensation which he is liable to pay to the workman under the memorandum or award or certificate; and, subject to these Rules, the procedure on such summons shall be the same as if the applicant had obtained a judgment or order for the payment of money against the employer, and the sum to which the employer is entitled from the insurers were a debt due, owing or accruing from the insurers to the employer, and the applicant had issued a garnishee summons against the insurers: and the provisions of Rules 5 to 9 and 11 to 13 of Order XXVIA. shall, with the necessary modifications, apply to such summons and the procedure thereon.

Note.—The following are the Rules above referred to:—

O. XXVIA., r. 5. No costs where garnishee pays.

"5. Where the garnishee shall pay into court five clear days before the return-day the amount due from him to the debtor liable under the judgment or order, or an amount equal to the judgment or order, he shall not be liable for any costs incurred by the person who obtained the judgment or order.

O. XXVIA., r. 6. Notice of payment to be given.

"6. The registrar shall forthwith give notice of the payment into court to the person who has obtained the judgment or order, and if such person elects to accept the money so paid into court by the garnishee, and shall send to the registrar and to the garnishee by prepaid post or leave with the registrar a written notice stating such acceptance, within forty-eight hours after receipt of the notice of payment into court, all further proceedings against the garnishee shall abate, and the registrar shall pay the money so paid into court to the person who obtained the judgment or order in discharge or part discharge of the debt due to such person, and of the costs of issuing the garnishee summons.

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R. 53 (*contd.*).

"7. If the garnishee does not before the return-day of the summons pay into court the amount due from him to the debtor liable under the judgment or order, or an amount equal to the judgment or order, and does not on the return-day dispute the debt due or claimed to be due from him to such debtor, or if he does not appear on the return-day either in person or by some person duly authorised on his behalf, then the judge may give judgment for the plaintiff, and may order execution to issue to levy the amount due from the garnishee, or so much thereof as may be sufficient to satisfy the judgment or order.

O. XXVIA., r. 7. Order on return-day.

"8. Upon the return-day, should the amount paid into court under Rule 5 of this Order be not accepted, the judge shall determine as to the liability of the garnishee to pay any further sum on account of the debt claimed to be due from him to the debtor, and as to the party by whom the costs of the proceeding by plaint shall be paid, and make such order as may be in accordance with such determination.

O. XXVIA., r. 8. Order when payment into court disputed.

"9. If the garnishee appears on the return-day and disputes his liability, the judge may, instead of giving judgment, order that any issue or question necessary for determining his liability be tried or determined in any manner in which any issue or question in an action may be tried or determined.

O. XXVIA., r. 9. Liability disputed.

"11. Whenever in proceedings to obtain an attachment of debts it is suggested by the garnishee that the debt sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the judge may order such third person to appear, and state the nature and particulars of his claim upon such debt. After hearing the allegations of such third person and of any other person whom the judge, by the same or any subsequent order, may order to appear, or in case of such third person not appearing when ordered, the judge may decide in favour of the person who obtained the judgment or order, or may order any issue or question to be tried or determined between the third person and the person who obtained the judgment or order, and may bar the claim of such third person or make such other order as such judge shall think fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the judge shall think just and reasonable.

O. XXVIA., r. 11. Where debt is stated to belong to a third person, or there is a lien thereon.

"12. Payment made by or execution levied upon the garnishee under any such proceeding as aforesaid shall be a valid discharge to him as against the debtor, liable under a judgment or order, to the amount paid or levied, although such proceeding may be set aside, or the judgment or order reversed.

O. XXVIA., r. 12. Discharge of garnishee.

"13. The costs of any application for an attachment of debts, and of any proceedings arising from or incidental to such application, shall be in the discretion of the judge."

O. XXVIA., r. 13. Costs.

54. It shall not be necessary in the first instance to give notice of the issue of the summons to the employer or his assignee (or, in case of bankruptcy, to the official receiver or other trustee, or, in case of liquidation of a company, to the provisional or other liquidator), but the judge or registrar may at any time direct such notice to be given; and thereupon the registrar shall issue for service on the person to whom such notice is directed to be given a copy of the summons, together with a notice signed by the registrar himself and under the seal of the court, giving notice to such person as to the day on which he is to attend at the court, and that if he does not attend, either in person or by his solicitor, at the place and time mentioned in the notice, such order will be made and proceedings taken as the judge may think fit; and such summons and notice shall be served in accordance with the provisions of Rule 15.

Provisions for notice to employer, or assignee, etc. Form 27.

55. Where the amount which the employer is liable to pay to a workman as compensation is a weekly payment, and such employer is entitled

Provisions as to weekly payments

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R. 55 (*contd.*).

payable by insurers.

to a weekly payment of the same or any less amount from insurers in respect of such amount, the judge may order the insurers to pay such weekly payment direct to the workman. In any such case the insurers shall have the same rights as the employer with respect to the review or redemption of such weekly payment.

Application against two or more sets of insurers.

56. Where an employer is entitled to separate sums from separate insurers in respect of the amount due to a workman, all or any two or more of such insurers may be made parties to one application.

Apportionment of sum payable by insurers, where more persons than one are entitled to compensation.

57. (1.) Where it appears on any application under section 5 of the Act that the employer is liable to pay compensation in respect of more accidents than one, or to more workmen than one, either under one award or memorandum or certificate or under two or more separate awards or memorandums or certificates, and that such employer is entitled to any sum from insurers in respect of the amounts due under such liability, but such sum is not sufficient to satisfy the whole of the amounts due under such liability, and has not, as between the employer and the insurers, been apportioned between such amounts or appropriated exclusively to some only of such amounts, the judge may order the insurers to pay such sum into court, and may, after notice given to the persons entitled to compensation in such manner as the judge shall direct, apportion such sum between the several persons entitled to compensation in such manner as may be just. For the purpose of any such apportionment, the judge may order any weekly payment to be redeemed, and may appoint any one or more proper person or persons to represent any other persons having the same interest, and may direct any necessary inquiries or accounts to be made or taken, and generally may give such directions and make such orders, as to costs or otherwise, as may be just.

Transfer and consolidation of proceedings for this purpose.

(2.) Where the employer is liable to pay compensation as aforesaid under two or more separate awards or memorandums or certificates recorded in the same court, the judge may for the purposes of this rule order the proceedings under such awards or memorandums or certificates to be consolidated; and where the employer is liable under separate awards or memorandums or certificates recorded in different courts, the judge of the court in which the summons to the insurers is issued may either request the judge of the other court to transfer the proceedings in such other court to the first-mentioned court, or may himself transfer the proceedings in the first-mentioned court to such other court; and such orders for transfer and consolidation of proceedings may be made as may be just and expedient for the purpose of dealing with the matter in the manner most convenient to the several persons entitled to compensation.

Discovery in aid of application under sect. 5. Order XXV., Rule 52.

58. In any case in which the circumstances are such that an application may be made under section 5 of the Act, the provisions of Order XXV., Rule 52, as to discovery in aid of execution shall apply in the same manner as if the employer were a debtor liable under a judgment or order; and such provisions may be resorted to either before or after an application is made.

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Note.—The following is the rule above referred to:— R. 58 (*contd.*).

"*Discovery in aid of Execution.*

"52. When a judgment or order is for the recovery or payment of money, the party entitled to enforce it may apply to the judge or registrar for an order that the debtor liable under such judgment or order, or in the case of a corporation, that any officer thereof, be orally examined, as to whether any and what debts are owing to the debtor, and whether the debtor has any and what other property or means of satisfying the judgment or order before the judge or registrar as the judge or registrar shall appoint; and the judge or registrar may make an order for the attendance and examination of such debtor, or of any other person, and for the production of any books or documents." O. XXV., r. 52. Examination of the debtor when judgment, etc., for recovery of money.

Payment and Application of Money directed to be Invested.

59. Where pursuant to paragraphs 6 and 7 or paragraph 13 of the first schedule to the Act, or pursuant to section 5 of the Act, any sum is agreed or is ordered by a committee or an arbitrator, or by the judge, to be invested in the Post Office Savings Bank by the registrar in his name as registrar, or to be paid into the Post Office Savings Bank in the name of the registrar, the following provisions shall apply:— Payment into court and application of money directed to be invested. Act, sect. 5, and Sched. 1, pars. 6, 7, 13.

(*a.*) The registrar of the court in which the memorandum of the agreement or of the order of the committee or arbitrator under which such sum is to be invested is recorded, or, in the case of an award made by the judge or an arbitrator appointed by him, or of an order made by the judge under section 5 of the Act, the registrar of the court in which the award or order was made, shall, on the memorandum or award or order being recorded, receive the sum to be invested from the party by whom the same is payable.

(*b.*) Immediately on such sum being paid, or on payment thereof being enforced, the registrar shall invest the same in accordance with the agreement, award, or order, and shall record such payment and investment in the special register hereinafter mentioned.

(*c.*) Any sum so paid and invested shall be paid out of court or otherwise disposed of in accordance with the agreement, award, or order under which the same is paid and invested, and, subject to the terms of such agreement, award, or order, in such manner as the judge from time to time shall direct, on application made to him in accordance with Rules 21 and 22 of Order IX. Order IX., Rules 21, 22.

Note.—The following are the Rules above referred to:—

"21. In any action or matter in which a sum of money has been awarded to or recovered by an infant, or person of unsound mind not so found by inquisition, the judge may at or after the trial order that the whole or any part of such sum shall be paid into court to the credit of an account intituled in the action or matter; and any sum so paid into court may either be invested, or paid from time to time out of court to such person as the judge may direct, to be held and applied for the benefit of such infant or person of unsound mind in such manner as the judge from time to time shall direct. Payment into court and investment of moneys awarded to or recovered by infant, etc.

"22. When any moneys have been paid into court or invested pursuant to the order of the judge under the last preceding rule, it shall not be necessary that Orders as to moneys in

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R. 59 (*contd.*).

court or invested under last rule.

applications in regard to them shall be made by petition. Any person interested may apply in person to the judge, or registrar, and he, on such evidence of right and identity as he may think necessary, may make such order as he may deem to be just."

Proceedings in one Court as to subject matter of Award or Memorandum recorded in another Court.

Filing of certified copy of memorandum, etc., recorded in one court under Act, sched. 2, par. 8, before taking subsequent proceedings in another court under par. 9.

60. Where an award, or a memorandum under paragraph 8 of the second schedule to the Act, or a certificate under sub-section 4 of section 1 of the Act, has been recorded in any court, and any party desires to take any subsequent proceedings with reference to the subject matter of such award, memorandum, or certificate in any other court under paragraph 9 of the said schedule, he shall before taking such proceedings obtain from the registrar of the first-mentioned court a certified copy of such award, memorandum, or certificate, and shall file the same in the court in which he desires to take proceedings, and the registrar of such last-mentioned court shall record the same as if it had been an award made in or a memorandum or certificate sent to the court.

Note.—See note on paragraph 9 of the second schedule, p. 104.

Transfer of Proceedings.

Transfer. *Conf.* County Courts Act, 1888, s. 85.

61. If the judge shall be satisfied by any party to any matter under the Act pending in his court that such matter can be more conveniently proceeded with in any other court, he may order such matter to be transferred to such other court; and thereupon the registrar shall forthwith transmit by registered post to the registrar of the court to which such matter is transferred all original documents filed in such matter, and a certified copy of all records made with reference to such matter, and shall transfer to such last-mentioned court any money invested in his name as registrar; and thenceforth such matter shall be proceeded with in the court to which it is transferred in the same manner as if it had originally been commenced therein. The provisions of Order VIII., Rule 9, shall apply to any such transfer or application for a transfer.

Order VIII., Rule 9.

Note.—The following is the Rule above referred to :—

"9. Where application is intended to be made for the transfer of any action, matter, or proceeding under section eighty-five of the Act, or under the last preceding Rule or under Order XXXIII., Rule 12, three clear days' notice in writing of such intended application shall be given by the applicant to the Registrar of the Court in which such action, matter, or proceeding is pending, and to all parties who may be affected by such application; but the Judge may at any time, by consent of all parties, or without such consent if he shall think fit, order a transfer although this Rule has not been complied with. When a transfer is ordered the Judge may make such order as to the costs incurred before or occasioned by such transfer as he shall think fit."

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Filing and Service of Documents and Notices.

R. 62 (1).

62. (1.) Where any document is to be filed with the registrar under these Rules, that document may be so filed by delivering it at the office of the registrar, or by sending it by post addressed to the registrar at his office.

(2.) Where any document is to be so filed, there shall be filed with the original document as many copies of the document as there are persons to whom copies of the document or any part thereof are to be sent by the registrar, and in addition a copy for the use of the judge or arbitrator.

(3.) Where any document is under these Rules to be sent to any person by the registrar, that document may be sent by post.

(4.) Any proceeding, document, or notice which is under these Rules to be served on any party may be served on such party by the opposite party or his solicitor; and where no special provision as to the mode of service is made by these Rules, any such proceeding, document, or notice may be served on such party, or where he acts by a solicitor, on his solicitor, in manner provided by sub-sections 2 to 5 of section 2 of the Act with reference to service of notice in respect of an injury.

Act, sect. 2, sub-sects. 2 to 5.

Procedure Generally.

63. The provisions of Order XXIII., Rule 4, and Order LI., Rules 1 to 6, as to parties acting by solicitors, and as to substituted service and notice in lieu of service, shall apply to proceedings under the Act.

Provisions as to parties acting by solicitors, and as to substituted service and notice in lieu of service. [Order XXIII., Rule 4; Order LI., Rules 1 to 6.]

Note.—The following are the Rules above referred to:—

"4. When a party acts by a solicitor, service of any judgment or order in the nature of a decree, and of any interlocutory order, or any notice relating to any such order when directed to be served, may be made by or upon such solicitor, as the case may be."

O. XXIII., r. 4. Service on solicitor.

"1. Where by these Rules any act may be done by any party, such act may be done either in person or by his solicitor or agent, if it can be legally done by an agent."

O. LI., r. 1. Party may act by solicitor or agent.

"2a. Where a party acts by solicitor, service of any proceeding or document upon such solicitor, or delivery of the same at his office, or sending the same to him by post prepaid, shall be deemed to be good service upon the party for whom such solicitor acts, as upon the day when the same is so served or delivered, or upon which in the ordinary course of post it would be delivered, except in cases where by these orders personal service upon a party is required. Provided that the provisions of this rule shall not extend to any default or judgment summons, nor except as provided by Ord. 7, r. 9c, to any ordinary summons.

O. LI., r. 2a. Service on solicitor deemed service on party.

"3. A solicitor acting for a party in any action or matter may give notice in writing by post or otherwise to the registrar and to the other party, or his solicitor, that he is so acting, whereupon service of any document, notice, or proceeding whatsoever authorized by these rules to be served by or upon a solicitor so acting shall be served by or upon such solicitor accordingly, and he shall be deemed to be the solicitor acting for the party on whose behalf he has given such notice, until notice of change of solicitor has been duly given. No notice need be given under this rule by a solicitor acting for the plaintiff where the plaint has been entered by such solicitor and the particulars duly signed by him.

O. LI., r. 3. Solicitor may give notice that he is acting.

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R. 63 (*contd.*).

O. LI., r. 4. Practice on service by solicitor.

O. LI., r. 5. Notice of change of solicitor.

O. LI., r. 6. Substituted service and notice in lieu of service.

"4. Where a solicitor undertakes the service of any process, he shall make the necessary copies of each process, and the registrar shall seal the same and return them to the solicitor for service.

"5. Any party who acts by solicitor shall be at liberty to change his solicitor without any order for that purpose, but when any such change is made he shall give twenty-four hours' notice in writing to the registrar and to the solicitor, if any, acting for any other party to the action or proceedings of such change, and of the name or firm and place of business of the new solicitor, and the registrar shall file the notice given to him; but until such notice is filed and a copy thereof served the former solicitor shall be continued as the solicitor of the party.

"6. Where by reason of the absence of any party, or from any other sufficient cause, the service of any summons (other than a default summons), notice, proceeding, or document cannot be made, the judge or registrar may, upon an affidavit showing grounds, make such order for substituted service, or for the substitution for service of notice by advertisement or otherwise, as may be just."

Procedure, where not otherwise provided for. *See* Tithe Rules 57.

64. Where any matter or thing is not specially provided for under these Rules, the same procedure shall be followed and the same provisions shall apply, as far as practicable, as in a similar matter or thing under the County Courts Act, 1888, and the Rules made in pursuance of that Act.

"**As far as Practicable.**"—That is, as far as they are applicable to the capacity in which the County Court Judge sits—that of arbitrator. (*Mountain* v. *Parr*, [1899] 1 Q. B. 805; 68 L. J. Q. B. 447.) *Per* SMITH, L.J.: "In my opinion the rules were only intended to apply the County Court procedure to arbitrations under this Act 'with the necessary modifications' arising from the fact that the judge sits to hear them as an arbitrator, and, 'as far as practicable,' considering that he is sitting in that capacity and in that capacity only."

It has not yet been decided whether the County Court procedure in interlocutory matters—in particular the administration of interrogatories—may be invoked in connection with arbitrations under this Act. By sched. ii., par. 10, it is provided that "the duty of a County Court Judge under this Act . . . shall . . . be part of the duties of the County Court, and the officers of the Court shall act accordingly." By Rule 24 of these Rules it is provided that the statutory provisions and rules for the time being in force relating to actions in the County Court shall, "*with the necessary modifications*," apply to arbitrations under this Act. It might well be argued that these provisions together with Rule 64 empower the registrar in arbitrations under this Act, when the Request has been once "entered and numbered as a plaint," to discharge one of his ordinary interlocutory functions, that of giving leave to deliver interrogatories under O. XVI. It may at any rate be the case that the judge himself, as arbitrator, has power to give such leave. Some light has been thrown upon the question by Rule 33 (1) (*a*), *ante*, p. 128, issued November, 1900. By that rule the arbitrator has power to allow the costs of administering interrogatories so that it may be presumed that he has power to give leave for their delivery.

Record of Proceedings.—Special Register.

Record of proceedings before judge or arbitrator. Special register. Form 30.

65. Proceedings under the Act before the judge or an arbitrator appointed by him shall be recorded in the books of the Court in the manner in which other proceedings in the Court are recorded; and the registrar shall also keep a special register for the purposes of the Act, in which he shall record—

(*a.*) A memorandum of every application made to the judge for the settlement of any matter by arbitration;

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R. 65 (*contd.*).

(*b.*) A memorandum of every appointment of an arbitrator made by the judge or by a judge of the High Court;

(*c.*) A memorandum of every proceeding taken in any arbitration before the judge or an arbitrator prior to the award;

(*d.*) A memorandum of every appointment of a medical referee by the judge or arbitrator, and of his report, and if he is requested to attend any proceeding in the arbitration, of such request and attendance;

(*e.*) A memorandum of every award made by the judge, or by an arbitrator appointed by him;

(*f.*) A copy of every certificate under sub-section 4 of section 1 of the Act given by the Court, or sent to the registrar from any other court;

(*g.*) A memorandum of every special case submitted to the judge, and of the proceedings and order thereon;

(*h.*) A memorandum of every judgment given by the Court of Appeal on any appeal;

(*i.*) A copy of every memorandum sent to the registrar pursuant to paragraph 8 of the second schedule to the Act, and of the report (if any) of the medical referee annexed thereto, with a note stating whether such memorandum was recorded without further proof, or after inquiry, or by order of the judge;

(*j.*) If such memorandum is recorded after inquiry, a memorandum of the inquiries made and of the result thereof;

(*k.*) If such memorandum is recorded by order of the judge, a memorandum of the application to the judge, and of the order made thereon;

(*l.*) A memorandum of the result of every taxation of costs under any such memorandum, or under any award or order.

(*m.*) A memorandum of every application to rectify the register in respect of any memorandum, and of the proceedings and order thereon;

(*n.*) A memorandum of every application to the judge or arbitrator, under paragraph 12 of the second schedule to the Act, to determine the amount of costs to be paid to a solicitor or agent, and of the proceedings and order thereon, and of the result of any taxation under such order;

(*o.*) A copy of every certified copy filed pursuant to Rule 60;

(*p.*) A memorandum of every proceeding taken in the Court for the stay of any proceedings or the enforcement of any award, order, memorandum, or certificate, and of the result of such proceeding;

(*q.*) A memorandum of every application to the judge for an order against insurers under section 5 of the Act, and of the proceedings under such application, and the order made thereon;

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R. 65 (*contd.*).

(*r.*) A memorandum of every sum paid into court and invested by the registrar;

(*s.*) A memorandum of every application made to the Court with reference to any such sum, and of every order made on such application, and of the manner in which such sum is applied or disposed of;

(*t.*) A memorandum of every application for transfer, and of the order thereon, and the proceedings under such order;

(*u.*) The like memorandum as to every matter transferred to the Court as would have been recorded as to such matter if it had been originally commenced and prosecuted in the Court;

(*v.*) A memorandum of any other matter which the judge shall order to be recorded with reference to any matter brought into or proceeding taken in the Court under the Act.

Matters, how distinguished.

Matters, how distinguished. *Conf.* Order II., Rule 3.

66. Every matter brought into the Court under the Act shall be intituled in the matter of the Act, and shall be distinguished by a separate number in addition to the number of the plaint (if any); and all documents filed and subsequent proceedings taken in the Court with reference to such matter shall be intituled in like manner, and shall be distinguished by the same number; and the entries made in the special register with respect to each such matter shall be entered together, and shall be kept separate from the entries with respect to any other matter.

Forms.

Forms in Appendix or like forms may be used. *See* Tithe Rules 58.

67. The forms in the Appendix, where applicable, and where they are not applicable forms of the like character, with such variations as the circumstances may require, may be used in proceedings under the Act.

Note.—See hereon the note under par. 10 of the second schedule, on the words "SHALL HAVE FULL EFFECT," *ante*, p. 104. See also judgment of ROMER, L. J., in the Court of Appeal (adopted as his own by LORD DAVEY in the House of Lords) in *Powell* v. *The Main Colliery Co.*, [1900] 2 Q. B. 145; 69 L. J. Q. B. 542.

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APPENDIX (A).

FORM 1

Form 1.

Application for Arbitration by an Injured Workman with respect to the Compensation payable to him.

In the County Court of holden at

No. of Plaint

In the matter of the Workmen's Compensation Act, 1897.

No. of Matter

In the matter of an Arbitration between

A.B.
of (*address*)
(*description*) Applicant,

and

C.D. & Co., Limited,
of (*address*)
(*description*) Respondents.

An arbitration under the Workmen's Compensation Act, 1897, is hereby requested between A.B. and C.D. & Co., Limited, as to the amount of compensation payable to the said A.B. under the said Act in respect of personal injury caused to the said A.B. by accident arising out of and in the course of his employment.

Particulars are hereto appended [*or* annexed].

PARTICULARS.

1. Name and address of injured workman.
2. Name, place of business, and nature of business of respondents.
3. Nature of employment of workman at time of accident, and whether employed under respondents or under contractors with them. [*If employed under contractors who are not respondents, name and place of business of contractors to be stated.*]
4. Date and place of accident, nature of work on which workman was then engaged, and nature of accident, and cause of injury.
5. Nature of injury.
6. Particulars of incapacity for work, whether total or partial, and estimated duration of incapacity.
7. Average weekly earnings during the twelve months previous to the injury, if the workman had been so long employed under the same employer, or if not, during any less period during which he had been so employed.
8. Estimated average amount which the workman is able to earn after the accident.

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Form 1 (*contd.*).

9. Payments not being wages received from employer in respect of the injury during the period of incapacity.

10. Amount of fine (if any) under any enactment relating to mines or factories applied for benefit of injured workman.

11. Amount claimed as compensation.

12. Date of service of statutory notice of accident on respondents, and whether given before workman voluntarily left the employment in which he was injured. [*A copy of the notice to be annexed.*]

13. If notice not served, reason for omission to serve same.

The names and addresses of the applicant and his solicitor are:

Of the Applicant,

Of his Solicitor,

The name and address of the respondents to be served with this application are:

Dated this day of .

(Signed) ,

Applicant.

[*Or* ,

Applicant's Solicitor.]

FORM 2.

Application for Arbitration by Legal Personal Representative of Deceased Workman on behalf of his Dependants, or by Dependants of Deceased Workman where no Legal Personal Representative, with respect to the Compensation payable in respect of the Injury to such Dependants, where Death has resulted from an Injury to the Workman, and the Settlement of questions as to who are Dependants, and the Apportionment and Application of such Compensation.

In the County Court of , holden at .

No. of Plaint

In the matter of the Workmen's Compensation Act, 1897.

No. of Matter

In the matter of an Arbitration between

E.F.
of (*address*)
(*description*) Applicant,

and

C.D. & Co., Limited,
of (*address*)
(*description*)

and

G.B.
of (*address*)
(*description*) Respondents

[*or as the case may be; see Rule* 4].

An arbitration under the Workmen's Compensation Act, 1897, is hereby requested between E.F. , the legal personal representative of A.B. , deceased, acting on behalf of the dependants of the said A.B. [*or* between E.F. , a dependant of A.B. , deceased] and C.D. & Co., Limited, , and G.B. , who claims to be a dependant of the said A.B.

[*or as the case may be; see Rule* 4].

with respect to the compensation payable to the dependants of the said A.B. under the said Act, in respect of the injury caused to the said dependants by the death of the said A.B. , which resulted from injury caused

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to the said A.B. by accident arising out of and in the course of his employment, and the settlement of questions as to who are dependants and the apportionment and application of such compensation.

Form 2 (*contd.*).

Particulars are hereto appended [*or* annexed].

PARTICULARS.

1. Name and late address of deceased workman.
2. Name, place of business, and nature of business of respondents from whom compensation is claimed.
3. Nature of employment of deceased workman at time of accident, and whether employed under respondents or under contractors with them. [*If employed under contractors who are not respondents, name and place of business of contractors to be stated.*]
4. Date and place of accident, nature of work on which deceased workman was then engaged, and nature of accident, and cause of injury.
5. Nature of injury to deceased workman, and date of death.
6. Earnings of the deceased workman during the three years next preceding the injury, if he was so long in the employment of the same employer, and if he was not so long in that employment, particulars of his average weekly earnings during the period of his actual employment under the said employer.
7. Amount of weekly payments (if any) made to the deceased workman under the Act.
8. Amount of fine (if any) under any enactment relating to mines or factories applied for benefit of deceased workman or his dependants.
9. Name and address of applicant for arbitration.
10. Character in which applicant applies for arbitration, *i.e.* whether as legal personal representative of deceased workman or as a dependant, and if as a dependant, particulars showing how he is so.
11. Particulars as to the dependants of the deceased workman by whom or on whose behalf the application is made, giving their names and addresses, and descriptions and occupations (if any), and if infants, their respective ages, and stating whether they were wholly or partially dependent on the earnings of the deceased workman at the time of his death.
12. Particulars as to any persons claiming to be dependants, but as to whose claim a question arises, and who are, therefore, made respondents, with their names, addresses, and descriptions and occupations (if any).
13. Particulars of amount claimed as compensation, and of the manner in which the applicant claims to have such amount apportioned and applied.
14. Date of service of statutory notice of accident on respondents from whom compensation is claimed, and whether given before deceased workman voluntarily left the employment in which he was injured. [*A copy of the notice to be annexed.*]
15. If notice not served, reason for omission to serve same.

The names and addresses of the applicant and his solicitor are:

Of the Applicant,
Of his Solicitor,

The names and addresses of the respondents to be served with this application are:

C.D & Co., Limited,
G. B.,

Dated this day of .

(Signed)
,
Applicant.

[*Or*
,
Applicant's Solicitor.]

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Form 3.

FORM 3.

Application for Arbitration as to who are Dependants, or as to the Amount payable to each Dependant, where the Total Amount Payable as Compensation to the Dependants of a Deceased Workman has been agreed or ascertained.

In the County Court of , holden at .

No. of Plaint

In the matter of the Workmen's Compensation Act, 1897.

No. of Matter

In the matter of an Arbitration between

E.F.,
of (*address*)
(*description*) Applicant,

and

C.D. & Co., Limited,
of (*address*)
(*description*)
and
G.H.,
of (*address*)
(*description*)
J.K.,
of (*address*)
(*description*)
and
L.M.,
of (*address*)
(*description*) Respondents

[*or as the case may be; see Rule* 5].

An arbitration under the Workmen's Compensation Act, 1897, is hereby requested between E.F. , the legal personal representative of A.B. , deceased (acting on behalf of N.O., P.R., &c., , dependants of the said A.B.), and C.D. & Co., Limited, and G.H., J.K., and L.M., , who are or claim to be dependants of the said A.B., ,

[*or as the case may be; see Rule* 5,]

to settle questions as to who are dependants of the said A.B. , and as to the apportionment and application of the agreed [*or* ascertained] amount of compensation payable to the dependants of the said A.B. , under the said Act in respect of the injury caused to the said dependants by the death of the said A.B. , which resulted from injury caused to the said A.B. by accident arising out of and in the course of his employment.

Particulars are hereto appended [*or* annexed].

PARTICULARS.

1. Name and late address of deceased workman.
2. Name and place of business of employers by whom compensation has been paid or is payable.
3. Date of accident to deceased workman, and date of death.
4. Agreed or ascertained amount of compensation to be paid to dependants of deceased workman.
5. Particulars as to whether the compensation money is still payable by the employers or has been paid by them, and if so, to whom, and in whose hands it now is.
6. Character in which the applicant applies for arbitration, *i.e.* whether as

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Form 3 (*contd.*).

legal personal representative of deceased workman or as a dependant, and if as a dependant, particulars showing how he is so.

7. Particulars as to the dependants or persons claiming to be dependants by whom or on whose behalf the application is made, giving their names and addresses, and descriptions and occupations (if any), and if infants, their respective ages, and stating whether they were or claim to have been wholly or partially dependent on the earnings of the deceased workman at the time of his death.

8. The like particulars as to any dependants who are made respondents.

[NOTE.—*If there is a Legal Personal Representative, and he is not the Applicant, he must be made a Respondent.*]

9. Particulars as to any persons claiming to be dependants, but as to whose claim a question arises, and who are therefore made respondents, with their names, addresses, descriptions, and occupations (if any).

10. Particulars of the manner in which the applicant claims to have the amount of compensation apportioned and applied.

The names and addresses of the applicant and his solicitor are:

Of the Applicant,

Of his Solicitor,

The names and addresses of the respondents to be served with this application are:

C.D. & Co., Limited.
G.H.
I.K.
L.M.

[*or as the case may be.*]

Dated this day of .

(Signed) ,
Applicant.

[*Or*, ,
Applicant's Solicitor.]

FORM 4.

Application for Arbitration by Legal Personal Representative of Deceased Workman with respect to the Compensation payable in respect of Expenses of Medical Attendance and Burial, or by Person to whom such Expenses are due, where Deceased leaves no Dependants.

In the County Court of holden at .

No. of Plaint

In the matter of the Workmen's Compensation Act, 1897.

No. of Matter

In the matter of an Arbitration between

E.F.,
of (*address*)
(*description*) Applicant,

and

C.D. & Co., Limited,
of (*address*)
(*description*)
and
G.H.,
of (*address*)
(*description*) Respondents.

An arbitration under the Workmen's Compensation Act, 1897, is hereby requested between E.F. and C.D. & Co., Limited, , and G.H. ,

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Form 4 (*contd.*).

as to the compensation payable under the said Act in respect of the reasonable expenses of medical attendance on and the burial of A.B. , deceased, whose death resulted from injury caused to the said A.B. , by accident arising out of and in the course of his employment, and the apportionment and application of such amount.

Particulars are hereto appended [*or* annexed].

PARTICULARS.

1. Name and late address of deceased workman.
2. Name, place of business, and nature of business of respondents from whom compensation is claimed.
3. Nature of employment of deceased workman at time of accident, and whether employed under respondents or under contractors with them. [*If employed under contractors who are not respondents, name and place of business of contractors to be stated.*]
4. Date and place of accident, nature of work on which deceased workman was then engaged, and nature of accident, and cause of injury.
5. Nature of injury to deceased workman, and date of death.
6. Name and address of applicant for arbitration.
7. Character in which applicant applies for arbitration, *i.e.* whether as legal personal representative of deceased workman, or as a person to whom expenses in respect of which compensation is payable are due; and if the latter, particulars must be given of the circumstances under which the expenses are claimed to be due to the applicant.
8. Particulars as to any other persons who claim that expenses in respect of which compensation is payable are due to them, and who are therefore made respondents, with their names and addresses.
9. Particulars of amount claimed as compensation, and of the manner in which the applicant desires such amount to be apportioned and applied.
10. Date of service of statutory notice of accident on respondents from whom compensation is claimed, and whether given before deceased workman voluntarily left the employment in which he was injured. [*A copy of the notice to be annexed.*]
11. If notice not served, reason for omission to serve same.

The names and addresses of the applicant and his solicitor are:

Of the Applicant,
Of his Solicitor,

The names and addresses of the respondents to be served with this application are:

C.D. & Co., Limited.
G.H.

Dated this day of .

(Signed) ,
Applicant.

[*Or* ,
Applicant's Solicitor.]

FORM 5.

Application for Arbitration with respect to the Review, Termination, Diminution, Increase, or Redemption of a Weekly Payment.

In the County Court of holden at .

No. of Plaint

In the matter of the Workmen's Compensation Act, 1897.

No. of Matter

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Form 5 (*contd.*).

In the matter of an Arbitration between
C.D. & Co., Limited,
of (*address*)
(*description*) Applicants,
and
A.B.,
of (*address*)
(*description*) Respondent.
[*or as the case may be; see* Act, Sched. 1, pars. 12, 13.]

An arbitration under the Workmen's Compensation Act, 1897, is hereby requested between C.D. & Co., Limited, and A.B.
[*or as the case may be; see* Act, Sched. 1, pars. 12, 13,]
with respect to the review and termination [*or* diminution, increase, *or* redemption, *as the case may be*] of the weekly payment payable to the said A.B. under the said Act in respect of personal injury caused to the said A.B. by accident arising out of and in the course of his employment.

Particulars are hereto appended [*or* annexed].

PARTICULARS.

1. Name and address of injured workman.
2. Name and place of business of employers by whom compensation is payable.
3. Date and nature of accident.
4. Date of agreement, decision, award, or certificate fixing weekly payment, amount of such payment, and date from which it commenced.
5. Relief sought by applicant, whether termination, diminution, increase, or redemption.
6. Grounds on which termination, diminution, or increase is claimed.

The names and addresses of the applicants and their solicitor are:—
Of the Applicants,
Of their Solicitor,

The name and address of the respondent to be served with this application are:

Dated this day of .
(Signed)
,
Applicants.
[*Or*
,
Applicants' Solicitor.]

FORM 6.

Notice to Applicant of Day upon which Arbitration will be proceeded with.

[*Heading as in Request for Arbitration.*]

TAKE NOTICE that the judge of this Court [*or* Mr. the arbitrator appointed by the judge of this Court] will proceed with the arbitration in this matter at on the day of at the hour of o'clock in the noon.

Dated this day of .

To Registrar of the Court.
Of

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Form 7.

FORM 7.

Notice to Respondent of Day upon which Arbitration will be proceeded with.

[*Heading as in Request for Arbitration.*]

TAKE NOTICE that the judge of this Court [*or* Mr. , the arbitrator appointed by the judge of this Court] will proceed with the arbitration applied for in the request and particulars, a sealed copy of which is served herewith at on the day of at the hour of o'clock in the noon: and that if you do not attend either in person or by your solicitor at the time and place above mentioned, such order will be made and proceedings taken as the judge [*or* arbitrator] may think just and expedient.

And further take notice that if you wish to disclaim any interest in the subject matter of the arbitration, or consider that the applicant's particulars are in any respect inaccurate or incomplete, or desire to bring any fact or document to the notice of the judge [*or* arbitrator], or intend to rely on any fact, or to deny (wholly or partially) your liability to pay compensation under the Act, you must file with me an answer, stating your name and address and the name and address of your solicitor (if any), and stating that you disclaim any interest in the subject matter of the arbitration, or stating in what respect the applicant's particulars are inaccurate or incomplete, or stating concisely any fact or document which you desire to bring to the notice of the judge [*or* arbitrator], or on which you intend to rely, or the grounds on and extent to which you deny liability to pay compensation.

Such answer, together with a copy thereof for the judge [*or* arbitrator], and a copy for the applicant and for each of the other respondents, must be filed with me 10 * clear days at least before the day of .

If no answer is filed, and subject to such answer, if any, the applicant's particulars and your liability to pay compensation will be taken to be admitted.

Dated this day of .

To

Of Registrar of the Court.

FORM 8.

Answer by Respondents.

[*Heading as in Request for Arbitration.*]

TAKE NOTICE—

That the respondent, G.H., disclaims any interest in the subject matter of the above arbitration.

Or,

That the respondents, C.D. & Co., Limited, state that the applicant's particulars filed in this matter are inaccurate or incomplete in the following particulars:—

Or,

That the respondents, C.D. & Co., Limited, desire to bring to the notice of the judge [*or* arbitrator] the following facts:—

That the applicant, A.B., refuses to submit himself to medical examination as

* As amended by the W. C. Rules, 1899. The original time was 5 days.

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Form 8 (contd.).

required by the respondents, C.D. & Co., Limited, in accordance with paragraph 3 of the 1st Schedule to the said Act [*or* obstructs the medical examination required by the respondents, C.D. & Co., Limited, in accordance with paragraph 3 of the 1st Schedule to the said Act]

(*or as the case may be*).

Or,

That the respondents, C.D. & Co., Limited, intend at the hearing of the arbitration to give in evidence and rely on the following facts:—

That no notice of the alleged accident was given to the respondents as required by section 2 of the said Act;

That the claim for compensation with respect to the alleged accident was not made within six months from the occurrence of the accident [*or in case of death*, within six months of the death of the said A.B.].

That a scheme of compensation [benefit *or* insurance] for the workmen of the respondents, C.D. & Co., Limited, in employment as has been duly certified by the Registrar of Friendly Societies, and such certificate has not been revoked, and the said C.D. & Co., Limited, contracted with the said A.B. by a contract which was in force at the date of the alleged accident that the provisions of the said scheme should be substituted for the provisions of the above-mentioned Act, and the said C.D. & Co., Limited, are consequently liable only in accordance with the said scheme:

Or,

That the respondents, C.D. & Co., Limited, deny their liability to pay compensation under the above-mentioned Act in respect of the injury to A.B. mentioned in the applicant's particulars, and that the grounds on which they deny their liability are:—

That the employment of the said A.B. was not an employment to which the said Act applies; *or*

That the injury to the said A B. was not caused by accident arising out of and in the course of his employment; *or*

That the injury to the said A.B. is attributable to the serious and wilful misconduct of the said A.B.

That at the time of the alleged accident the said A.B. was not immediately employed by the respondents, C.D. & Co., Limited, but was employed by of , a contractor with the said C.D. & Co., Limited, in the execution by the said of work which was merely ancillary [*or* incidental] to, and was no part of or process in the trade or business carried on by the said C.D. & Co., Limited.

(*or as the case may be*)

And further take notice, that the names and addresses of the said respondents and their solicitors are:

of the Respondents,
C.D. & Co., Limited,
of their Solicitors,

Dated this day of .

(Signed)

Solicitors for the Respondents,
C.D. & Co., Limited.

To the Registrar of the Court, and
To the Applicant, A.B., and
To the Respondents
(*if any, naming them*).

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Form 9.

FORM 9.

Notice by Respondent Admitting Liability, and Submitting to an Award for Payment of a Weekly Sum, or Paying Money into Court.

[*Heading as in Request for Arbitration.*]

TAKE NOTICE—

That the respondents, C.D. & Co., Limited, admit their liability to pay compensation in the above-mentioned matter.

And they hereby submit to an award for payment by them to the applicant, A.B., of the weekly sum of such weekly payment to commence as from the day of and to continue during the total or partial incapacity of the said A.B. for work, or until the same shall be ended, diminished, increased, or redeemed in accordance with the provisions of the above-mentioned Act.

And for payment by them to the said A.B. forthwith after the award of the amount of such weekly payments calculated from the day of until the first Saturday [*or other usual pay day*] after the date of the award, and for the payment thereafter of the said sum of to the said A.B. on Saturday [*or other usual pay day*] in every week.

[*Or*, And the said C.D. & Co., Limited, herewith pay into Court the sum of £ in satisfaction of such liability.]

Dated this day of .

(Signed)

Solicitors for the Respondents,
C.D. & Co., Limited.

To the Registrar of the Court, and
To the Applicant A.B., and
To the Respondents
(*if any, naming them*).

FORM 10.

Notice of Filing of Submission to an Award.

[*Title as in Request for Arbitration.*]

TAKE NOTICE—

That the respondents, C.D. & Co., Limited, have this day filed with me a notice (copy of which is sent herewith) that they admit their liability to pay compensation in the above-mentioned matter, and submit to an award for payment by them to you of the weekly sum of .

If you elect to accept such weekly sum in satisfaction of your claim, you must send to the registrar of this Court, and to the said C.D. & Co., Limited, a written notice forthwith by post, or leave such notice at the office of the registrar, and at the residence or place of business of the said C.D. & Co., Limited.

If you send such notice, the judge of this Court will, on application made to him, make an award directing payment of such weekly sum to you, and you will be liable to no further costs.

In default of such notice, the arbitration will be proceeded with; and if no greater weekly payment is awarded to you, you will be liable to be ordered to pay the costs incurred by the respondents subsequent to the receipt by you of this notice.

Dated this day of .

Registrar of the Court.

To the Applicant, A.B.

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FORM 11.

Form 11.

Notice of Payment into Court.

[*Title as in Request for Arbitration.*]

TAKE NOTICE—

That the respondents, C.D. & Co., Limited, have this day filed with me a notice that they admit their liability to pay compensation in the above-mentioned matter, and they have paid into Court the sum of £ in satisfaction of such liability.

If you are willing to accept the sum so paid into Court, in satisfaction of the compensation payable in the above-mentioned matter, you must send to the registrar of this Court, and to the said C.D. & Co., Limited, and to the other respondents [*or, where this notice is sent to a respondent*, to the applicant and the other respondents], a written notice forthwith by post, or leave such notice at the office of the registrar, and at the residence or place of business of the said C.D. & Co., Limited, and at the residence or place of business of each of the other respondents [*or* of the applicant and each of the other respondents].

If you and all the other respondents [*or*, If you and the applicant and all the other respondents] send such notice, and agree as to the apportionment and application of the said sum of £ , the judge of this Court will, on application made to him, make an award for such apportionment and application, and you will be liable to no further costs.

If you and all the other respondents [*or*, If you and the applicant and all the other respondents] send such notice, but do not agree as to the apportionment and application of the said sum of £ , the arbitration will be proceeded with as between you and such other respondents [*or*, as between the applicant and yourself and such other respondents].

In default of such notice being sent by you and all the other respondents [*or*, by the applicant and yourself and all the other respondents], the arbitration will be proceeded with: and if no greater amount than the said sum of £ is awarded as compensation, the parties who do not send such notice will be liable to be ordered to pay the costs incurred by the respondents, C.D. & Co., Limited, subsequent to the receipt by such parties of this notice, and also any costs incurred subsequent to the receipt of this notice by any parties who send notice of their willingness to accept the said sum of £ in satisfaction of the compensation payable in the above-mentioned matter.

Dated this day of .

Registrar of the Court.

To the Applicant, A.B.,
[*or* To the Respondent, G.H.]
(*or as the case may be*).

FORM 12.

Notice of Acceptance of Weekly Sum offered, or of Willingness to accept Sum paid into Court.

[*Heading as in Request for Arbitration.*]

TAKE NOTICE—

That the applicant, A.B. accepts the weekly sum offered by the respondents, C.D. & Co., Limited, in satisfaction of his claim in the above-mentioned matter [*or*, that the applicant E.F. [*or*, the respondent G.H.] is willing to accept the sum of £ paid into Court by the respondents, C.D.

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Form 12 (*contd.*).

& Co., Limited, in satisfaction of the compensation payable in the above-mentioned matter].

But the applicant [*or* the said respondent, G.H.] will apply to the judge to include in his award an order directing the said respondents, C.D. & Co., Limited, to pay the costs properly incurred by the applicant [*or* the said respondent G.H.] before the receipt of notice of the offer of the said weekly sum [*or* of notice of payment of the said sum of £ into Court].

Dated this day of .

(Signed) , Applicant.

[*Or* ,

To the Registrar of the Court, and Respondent].

To the Respondents, C.D. & Co., Limited, and

To the Applicant, A.B , and

To the Respondents (*naming them*).

FORM 13.

Notice by Respondent to Third Parties.

[*Heading as in Request for Arbitration.*]

To Mr. , of (*address and description*).

TAKE NOTICE—That A.B. of, &c., , has filed a request for arbitration (a copy whereof is hereto annexed) as to the amount of compensation payable by the respondents, C.D. & Co., Limited, to the said A.B. under the said Act in respect of personal injury caused to the said A.B. by accident arising out of and in the course of his employment.

The respondents, C.D. & Co., Limited, claim to be indemnified by you against their liability to pay such compensation, on the ground that at the time of the injury in respect of which compensation is claimed the said A.B. was not immediately employed by the said C.D. & Co., Limited, but was employed by you in the execution of work in respect of which the said C.D. & Co., Limited, had contracted with you for the execution thereof by or under you, and that you would, independently of section 4 of the said Act, have been liable to pay compensation in respect of such injury.

[*Or* on the ground that the injury for which compensation is claimed was caused under circumstances creating a legal liability on your part to pay damages in respect thereof]

(*or as the case may be*).

And take notice, that if you wish to dispute the applicant's claim as against the respondents, C.D. & Co., Limited, you must appear before the judge [*or* arbitrator] at the time and place mentioned in the notice, a copy of which is hereunto annexed.

In default of your so appearing you will not be entitled in any future proceedings between the respondents, C.D. & Co., Limited, and yourself to dispute the validity of the award made in the said arbitration as to any matter which the judge [*or* arbitrator] has jurisdiction to decide in such arbitration as between the applicant and the respondents, C.D. & Co., Limited, whether such award is made by consent or otherwise.

Dated this day of .

(Signed) C.D. & Co., LIMITED,

To By ,

Secretary.

of [*Or*

Solicitors for the Respondents, C.D. & Co., Limited.]

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FORM 14. **Form 14.**

Award.

(i.) In Case of Application by Workman.

[*Heading as in Request for Arbitration.*]

Having duly considered the matters submitted to me, I do hereby make my award as follows:—

1. I order that the respondents, C.D. & Co., Limited, do pay to the applicant, A.B., the weekly sum of as compensation for personal injury caused to the said A.B. on the day of , by accident arising out of and in the course of his employment as a workman employed by the said C.D. & Co. in [*state nature of employment*] such weekly payment to commence as from the day of , and to continue during the total or partial incapacity of the said A.B. for work, or until the same shall be ended, diminished, increased, or redeemed in accordance with the provisions of the above-mentioned Act.

2. And I order that the said C.D. & Co. do forthwith pay to the said A.B. the sum of £ being the amount of such weekly payments calculated from the day of until the day of [*the first Saturday or other usual pay day after the date of the award*] and do thereafter pay the said sum of to the said A.B. on Saturday (*or other usual pay day*) in every week.

3. And I order that the said C.D. & Co. do pay to the registrar of this Court, for the use of the applicant, his costs of and incident to this arbitration, such costs, in default of agreement between the parties as to the amount thereof, to be taxed by the registrar under column of the scales of costs in use in the County Courts, and to be paid by the said C.D. & Co. to the registrar within 14 days from the date of the certificate of the result of such taxation.

Dated this day of .

Judge [*or* Arbitrator].

(ii.) In Case of Application by Dependants.

[*Heading as in Request for Arbitration.*]

Having duly considered the matters submitted to me, I do hereby make my award as follows:—

1. I order that the respondents, C.D. & Co., Limited, do pay the sum of £ to the dependants of A.B. , late of , deceased, as compensation for the injury resulting to such dependants from the death of the said A.B. , which took place on the day of from injury caused to the said A.B. on the day of by accident arising out of and in the course of his employment as a workman employed by the said C.D. & Co., Limited, in [*state nature of employment*].

2. And I declare that the persons hereinafter named are entitled to share in such compensation as dependants of the said A.B. , that is to say,

J.B. the widow of the said A.B.

and K.B. an infant daughter of the said A.B.

3. And I declare that the respondent G.B. , the father of the said A.B. , is not entitled to share in such compensation as a dependant of the said A.B.

4. And I order that the said sum of £ be apportioned between the said J.B. and K.B. in the proportions following, that is to say:—

I apportion the sum of £ to or for the benefit of the said J.B.,

and the sum of £ to or for the benefit of the said K.B.

5. And I order that the said C.D. & Co., Limited, do pay the said sum

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Form 14 (*contd.*).

of £ to the applicant, E.F., the legal personal representative of the said A.B. [*or if no legal personal representative*, to the registrar of this Court,] for the use of the said J.B. within 14 days from the date of this award, and that the said C.D. & Co., Limited, do within the same period pay the said sum of £ apportioned to or for the benefit of the said K.B. to the registrar of this Court.

6. And I order that the said last-mentioned sum be invested by the registrar in his name in the Post Office Savings Bank for the benefit of the said K.B., and that the interest arising from such investment be from time to time, until further order, paid to the said J.B. to be by her applied for the maintenance, education, or benefit of the said K.B.

7. And I order that the said C.D. & Co., Limited, do pay to the registrar of this Court, for the use of the applicants, their costs of and incident to this arbitration, such costs, in default of agreement between the parties as to the amount thereof, to be taxed by the registrar under column of the scales of costs in use in the County Courts, and to be paid by the said C.D. & Co., Limited, to the registrar within 14 days from the date of the certificate of the result of such taxation.

[*Add directions (if any given) as to costs occasioned by claim of person claiming as a dependant whose claim is disallowed.*]

Dated this day of .

Judge [*or* Arbitrator].

(iii.) In Case of Application by Person to whom Expenses of Medical Attendance or Burial are due.

[*Heading as in Request for Arbitration.*]

Having duly considered the matters submitted to me, I do hereby make my award as follows:—

1. I order that the respondents, C.D. & Co., Limited, do pay the sum of £10 for or towards the expenses of medical attendance on and the burial of A.B., late of , deceased, who died on the day of from injury caused on the day of by accident arising out of and in the course of the employment of the said A.B. as a workman employed by the said C.D. & Co., Limited, in [*state nature of employment*].

2. And I declare that the persons hereinafter named are entitled to share in such compensation, that is to say:

The applicant, E.F. , in respect of charges amounting to £ due to him for medical attendance on the said A.B. and the respondent, G.H. , in respect of charges amounting to £ due to him for the burial of the said A.B.

3. And I order that the respondents, C.D. & Co., Limited, do pay the said sum of £10 to the registrar of this Court within 14 days from the date of this award, and that the said sum of £10 be apportioned between and paid to the said E.F. and G.H. in proportion to the amounts due to them respectively as aforesaid.

4. And I order that the said C.D. & Co., Limited, do pay to the registrar of this Court for the use of the applicant, E.F., and the respondent, G.H., their respective costs of and incident to this arbitration, such costs, in default of agreement between the parties as to the amount thereof, to be taxed by the registrar under column of the scales of costs in use in the County Courts, and to be paid by the said C.D. & Co., Limited, to the registrar within 14 days from the date of the certificate of the result of such taxation.

Dated this day of .

Judge [*or* Arbitrator].

[*Note.*—The above forms will serve as guides for framing awards in other cases of arbitration.]

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FORM 15.

Form 15.

Notice of Day upon which Special Case will be heard.

In the County Court of , holden at .

[*Heading as in Special Case.*]

TAKE NOTICE that the judge of this Court will hear the special case stated by Mr. , the arbitrator in the above-named matter, at a Court to be holden at , on the day of at the hour of in the noon; and that if you do not attend in person or by your solicitor at the place and time above mentioned, such order will be made and proceedings taken as the judge may think just.

You may obtain a copy of the case upon application at my office and upon prepayment of the costs of such copy.

Dated this day of .

Registrar of the Court.

To [*The Applicant and Respondents.*]

FORM 16.

Form of Memorandum under Paragraph 8 of Schedule II.

To the Registrar of the County Court of , holden at .

In the matter of the Workmen's Compensation Act, 1897,

and

In the matter of an Arbitration between

A.B. of, &c., Applicant,

and

C.D. & Co., Limited,

of, &c., Respondents.

[*or where the matter has been decided by agreement without arbitration*—

In the matter of an Agreement between

A.B. of, &c.,

and

C.D. & Co., Limited,

of, &c., .]

Be it remembered, that on the day of personal injury was caused to the said A.B. of, &c., who was a workman employed by C.D. & Co., Limited, of, &c., in [*state nature of employment*] , by accident arising out of and in the course of his employment:

And that on the day of the following agreement was come to by and between the said A.B. and the said C.D. & Co., Limited, that is to say:

[*or*, And that on the day of the following decision was given by a committee representative of the said C.D. & Co., Limited, and their workmen, having power to settle matters under the above-mentioned Act in the case of the said C.D. & Co., Limited, and their workmen; that is to say:]

[*or*, And that on the day of the following award was made and given by me, the undersigned , being an arbitrator agreed on by the said A.B. and the said C.D. & Co., Limited; that is to say:]

[*Here set out copy of agreement, decision, or award.*]

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Form 16 (*contd.*).

[*or, where death resulted from the accident,*

Be it remembered, that on the day of personal injury was caused to A.B. , late of deceased, who was a workman employed by C.D. & Co., Limited, of, &c., in [*state nature of employment*] by accident arising out of and in the course of his employment, and that on the day of the said A.B. died as the result of such injury:

And that on the day of the following agreement was come to by and between C.B. G.B. &c., the dependants of the said A.B. within the meaning of the above-mentioned Act, and the said C.D. & Co., Limited, that is to say:

[*or*, And that on the day of the following decision was given by a committee representative of the said C.D. & Co., Limited, and their workmen, having power to settle matters under the above-mentioned Act in the case of the said C.D. & Co., Limited, and their workmen; that is to say:]

[*or*, And that on the day of the following award was made and given by me, the undersigned, being an arbitrator agreed on by C.B. G.B. , &c., , the dependants of the said A.B. within the meaning of the above-mentioned Act, and the said C.D. & Co., Limited, ; that is to say:]

[*Here set out copy of agreement, decision, or award.*]

A copy of the report of Mr. , a medical referee appointed to report in the above-mentioned matter, is hereunto annexed [*add, if so,* The said Mr. attended the arbitration on the day of].

You are hereby requested to record this memorandum, pursuant to paragraph 8 of the second schedule to the above-mentioned Act.

Dated this day of .

[*To be signed—*

In the case of an agreement, by the parties or some or one of them, or by their or his solicitor on their or his behalf:

In the case of a decision by a committee, by the chairman and secretary on behalf of the committee:

In the case of an award, by the arbitrator.]

FORM 17.

Inquiry as to Genuineness of Memorandum.

In the County Court of , holden at .

[*Heading as in Memorandum.*]

TAKE NOTICE, that a memorandum, copy of which is hereto annexed, has been sent to me for registration.

Such memorandum, which appears to affect you, is not signed by you or on your behalf.

I have therefore to request you to inform me in due course of post, whether you admit the genuineness of the memorandum, or whether you dispute it, and if so, in what particulars.

If you do not inform me in due course of post that you dispute the genuineness of the memorandum, it will be recorded without further inquiry, and will be enforceable accordingly.

If you dispute its genuineness, it will not be recorded, except with your consent in writing, or by order of the judge of this Court.

Dated this day of .

Registrar of the Court.

To

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Form 18.

FORM 18.

Notice disputing Memorandum.

In the County Court of , holden at .

[*Heading as in Memorandum.*]

TAKE NOTICE, that the undersigned C.D. & Co., of &c., dispute the genuineness of the memorandum sent to you for registration in the above-mentioned matter in the following particulars:

[*here state particulars*].

Dated this day of .

C.D. & Co., Limited,
by
Secretary.

[*Or* ,
Solicitors for C.D. & Co., Limited.]

To
The Registrar.

FORM 19.

Notice that Genuineness of Memorandum is disputed.

[*Heading as in last Form.*]

TAKE NOTICE, that the genuineness of the memorandum in the above-mentioned matter left with [*or* sent to] me by you is disputed by of , a party affected by such memorandum, but who has not signed the same, in the following particulars:

[*here state particulars of dispute*].

The memorandum will therefore not be recorded, except with the consent in writing of the said , or by order of the judge of this Court.

Dated this day of .

Registrar of the Court.

To

FORM 20.

Notice of Application for Registration of Memorandum or for Rectification of Register.

In the County Court of , holden at .

[*Title as in the Memorandum.*]

TAKE NOTICE, that I intend to apply to the judge at on the day of , at the hour of o'clock in the noon [*in case of notice by solicitor*, on behalf of of] for an order for the registration of the memorandum sent to the registrar in the above-mentioned matter [*or* for an order for the rectification of the memorandum

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Form 20 (*contd.*).

recorded in the above-mentioned matter] by (*state particulars of rectification applied for*),
and for consequential directions, and for costs.

Dated this day of

Applicant.
[*Or* Applicant's Solicitor.]

To the Registrar of the Court
and to
and to Messrs.
(his [*or* their] solicitors).

FORM 21

Notice of Application for Determination of Amount of Costs under Paragraph 12 of Schedule II. to the Act.

In the County Court of , holden at .
[*Title as in Award or Memorandum.*]

TAKE NOTICE, that I intend to apply to the judge at on the day of at the hour of o'clock in the noon, to determine the amount of costs to be paid to me as solicitor [*or* agent] for you A.B. in the above-mentioned matter; and for an order declaring that I am entitled to a lien for such amount on or to deduct such amount from the sum awarded as compensation to you the said A.B. in the above-mentioned matter, and for consequential directions.

Dated this day of

Applicant.

To the Registrar of the Court,
and to
A.B.
of

FORM 22.

Form of Certificate under Section 1, Sub-section 4.

In the County Court of , holden at .

No. of plaint.

Between

A.B.
of (*address*)
(*description*) Plaintiff,

and

C.D. & Co., Limited,
of (*address*)
(*description*) Defendants.

And in the matter of the Workmen's Compensation Act, 1897.

I hereby certify that on the day of the above-named plaintiff commenced the above-named action against the above-named defendants, claiming [*here state claim of plaintiff in action.*]

And that on the trial of the said action on the day of it was determined that the injury in respect of which the plaintiff claimed damages in the said action was one for which the defendants were not liable in the said

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Form 22 (*contd.*).

action, but that such defendants would have been liable to pay compensation in respect of such injury under the above-mentioned Act;

And that thereupon the said action was dismissed, but the Court, on the request of the plaintiff, proceeded to assess the compensation which the defendants would have been liable to pay under the said Act.

And that the Court assessed such compensation at the sum of £ and directed [*state directions given as to payment of compensation, and directions, if any given, as to costs, and as to the deduction from the compensation of any costs which in the judgment of the Court were caused by the plaintiff bringing the action instead of proceeding under the Act.*

Dated this day of .

Registrar of the Court.

FORM 23.

Execution on Award, or Memorandum, or Certificate.

In the County Court of , holden at .

[*Title as in Award, Memorandum, or Certificate.*]

Whereas on the day of an award was made in the above-mentioned matter by the judge [*or* by Mr. , an arbitrator appointed by the judge] whereby it was ordered [*state operative parts of award*]:

[*or* whereas on the day of a memorandum was recorded in this Court of an agreement [*or* decision *or* award] come to [*or* given *or* made] in the above-mentioned matter, whereby it was agreed [*or* ordered] [*state operative parts of agreement, decision, or award*]

[*or* whereas on the day of a memorandum was recorded in this Court of a certificate given by the County Court of , holden at to the effect that [*state operative parts of certificate*]:

And whereas default has been made in payment of the sum of £ payable by the said into Court [*or* to the said A.B.] according to the said award [*or* memorandum *or* certificate];

These are therefore [*as in ordinary executions*].

[*This form to be adapted to the circumstances of the case where execution is ordered to issue under Rule* 47, *paragraph* (*e*) *for costs.*]

FORM 23A.*

Judgment Summons on Award, Memorandum, or Certificate.

In the County Court of , holden at .

[*Title as in Award, Memorandum, or Certificate.*]

Whereas on the day of an award was made in the above-mentioned matter by the judge (*or* by Mr. , an arbitrator appointed by the judge), whereby it was ordered (*state operative parts of award*):

[*or* whereas on the day of a memorandum was recorded in this Court of an agreement (*or* decision *or* award) come to (*or* given *or* made) in the above-mentioned matter whereby it was agreed (*or* ordered) [*state operative parts of agreement, decision, or award*]:

[*or* whereas on the day of a memorandum was recorded in this Court of a certificate given by the County Court of , holden at to the effect that [*state operative parts of certificate*]:

---

* Added by the Workmen's Compensation Rules, 1900.

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Form 23A. (*contd.*).

And whereas default has been made in payment of the sum of £ payable by you the above-named into Court (*or* to the said A.B.) according to the said award [*or* memorandum *or* certificate]:

You the said are therefore hereby summoned to appear personally in this Court at (*place where Court holden*) on the day of 19 , at the hour of in the noon, to be examined on oath by the Court touching the means you have or have had since the date of the award (*or* memorandum *or* certificate) to pay the said sum, in payment of which you have made default; and also to show cause why you should not be committed to prison for such default.

Dated this day of 19 .

Registrar.

	£	s.	d.
Amount in payment of which default has been made			
Cost of this summons			
Total sum due			

[*This form to be adapted to the circumstances of the case where a summons is issued under the County Court Rules, Order XXV., Rule 14b, against a person alleged to be a partner in or sole member of a firm, or to be carrying on business in any name other than his own. If an order of commitment is made, it should be according to the Form* 57 *in the Appendix to the County Court Rules, such form being adapted to the case of default in payment of an amount due under an award, memorandum, or certificate.*]

FORM 24.

Notice of Application to stay Proceedings in Arbitration or suspend Weekly Payments, under Schedule I., paragraph 3, or paragraph 11, and Rule 50.

[*Heading as in Request for Arbitration, or Award, or Memorandum, or Certificate, as the case may be.*]

TAKE NOTICE, that I intend to apply to the judge [or to Mr. the arbitrator appointed in the above-mentioned matter] at on the day of at the hour of o'clock in the noon, [on behalf of Messrs. C.D. & Co., Limited, of &c.,] for an order staying the proceedings in the above-mentioned arbitration [*or* suspending the weekly payments awarded to you by the above-mentioned award, *or* memorandum *or* certificate] on the ground that you refuse to submit yourself to medical examination as required by me [*or* by the said C.D. & Co., Limited], in accordance with paragraph 3 [*or* paragraph 11] of the first schedule to the above-mentioned Act [*or* that you obstruct the medical examination required by me [*or* by the said C.D. & Co., Limited,] in accordance with paragraph 3 [*or* paragraph 11] of the first schedule to the above-mentioned Act], and for consequential directions, and for costs.

Dated this day of .

To A.B., of
and to Messrs.
his Solicitors

(Signed) C.D. & Co., Limited,
by Secretary.
[*or*
Solicitors for C.D. & Co., Limited.]

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Form 25.

FORM 25.

Affidavit on Summons against Insurers under Section 5 of the Act.

In the County Court of , holden at

[*Title as in Award, Memorandum, or Certificate.*]

I, A.B. of [*or* I, E.F., of solicitor to A.B. of ,] make oath and say as follows:

1. On the day of an award was made in the above-mentioned matter by the judge [or by Mr. an arbitrator appointed by the judge] whereby it was ordered [*state operative parts of award*]:

[*or* on the day of a memorandum was recorded in this Court of an agreement [*or* decision, *or* award, *or* certificate] come to [*or* given *or* made] in the above-mentioned matter whereby it was agreed [*or* determined *or* ordered] [*state operative parts of agreement, decision, award, or certificate.*]

2. The sum of £ [*or* a weekly payment of from the day of *as the case may be*] still remains due [*or* payable] to me [*or* to the said A.B.] from or by the said C.D. under the said award [*or* memorandum *or* certificate.]

3. The said C.D. is [*or* are] entitled to the sum [*or* weekly payment] of from of [*insert name and address of insurers*] in respect of the amount due [*or* payable] to me [*or* to the said A.B.] as aforesaid.

4. [*Here state particulars showing that the employer has become bankrupt, or made a composition or arrangement with his creditors, or, if a company, that the company has commenced to be wound up; stating, in case of an assignment, the names and addresses of the assignees, or, in case of bankruptcy, the name and address of the official receiver or other trustee, or, in case of liquidation, the name and address of the provisional or other liquidator, so far as known to the deponent.*]

5. I [*or* the said A.B.] claim [*or* claims] to have by virtue of the said Act a first charge on the sum [*or* weekly payment] to which the said C.D. is [*or* are] entitled from the said (*insurers*) as aforesaid, for the amount so due [*or* payable] to me [*or* him], and claim [*or* claims] that the said may be ordered to pay the said sum, or so much thereof as may be sufficient to satisfy the amount so due to me [*or* the said A.B.] into Court, to be invested or applied for my [*or* his] benefit [*or, in the case of a weekly payment,* that the said may be ordered to pay the said weekly payment to me [*or* him]].

Sworn, &c.

FORM 26.

Summons to Insurers.

In the County Court of , holden at

No. of plaint.

[*Title as in Award, or Memorandum, or Certificate.*]

Insurers.

[*Insert here name, address, and description of Insurers.*]

Whereas [*recite award, or memorandum, or certificate, as in affidavit*]:
And whereas the said A.B. has filed an affidavit in this Court, stating

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Form 26 (*contd.*).

that the sum of £ [*or* a weekly payment of from the day of [*as the case may be*] still remains due [*or* payable] to him from or by the said C.D. under the said award [*or* memorandum, *or* certificate]:

And that the said C.D. is [*or* are] entitled to the sum [*or* weekly payment] of from you in respect of the amount due or payable to the said A.B. as aforesaid:

And that [*Here repeat allegations in affidavit as to bankruptcy, composition, arrangement, or winding up*].

And that the said A.B. claims by virtue of the said Act to have a first charge on the sum [*or* weekly payment] to which the said C.D. is [*or* are] so entitled from you as aforesaid, and claims that you may be ordered to pay the said sum, or so much thereof as may be sufficient to satisfy the amount so due to the said A.B., into Court, to be invested or applied for his benefit [*or, in the case of a weekly payment*, that you may be ordered to pay the said weekly payment to him]:

You are therefore hereby summoned to appear at a Court to be holden at , on the day of , at o'clock in the noon, to show cause why an order should not be made upon you for the payment into Court of the sum to which the said C.D. is [*or* are] entitled from you as aforesaid, or so much thereof as may be sufficient to satisfy the amount so due to the said A.B. [*or* for the payment by you of the said weekly payment to the said A.B.]:

And take notice, that from and after the service of this summons upon you such sum [*or* weekly payment] is attached to answer the sum [*or* weekly payment] payable to the said A.B. as aforesaid, and that if you shall pay the said sum [*or* weekly payment] to the said C.D. or otherwise dispose of the same, you will be liable to be dealt with for contempt.

Dated this day of .

To

[*the Insurers*]. Registrar of the Court.

FORM 27.

Notice to Employer or his Assignee, or to Official Receiver or Trustee in Bankruptcy, or Liquidator, of Issue of Summons to Insurers.

[*Title as in Summons to Insurers.*]

TAKE NOTICE, that a summons, a sealed copy of which is served herewith, has been issued in the above-mentioned matter, and that the judge [*or* registrar] of this Court has directed that notice of the issue of such summons shall be given to you.

AND FURTHER TAKE NOTICE, that the hearing of the said summons will be proceeded with at on the day of at o'clock in the noon, and that if you do not attend, either in person or by your solicitor, at the place and time above mentioned, such order will be made and proceedings taken as the judge may think fit.

Dated this day of .

To Registrar of the Court.

[*The Employer or his Assignee, or the Official Receiver or other Trustee in Bankruptcy, or the Provisional or other Liquidator.*]

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Form 28.

FORM 28.

Order against Insurers.

[*Title as in Summons.*]

Whereas [*recite award or memorandum or certificate, as in affidavit.*]

And whereas the said A.B. having filed an affidavit [*recite affidavit as in summons*] the said were summoned to appear before the Court this day and to show cause why an order should not be made on them for the payment into Court by them of the sum to which the said C.D. is [*or* are] entitled from them as aforesaid, or so much thereof as might be sufficient to satisfy the amount so due to the said A.B. [*or* for the payment by them of the said weekly payment to the said A.B. .]

Now the said having failed to appear before the Court this day [*or* having appeared before the Court this day and failed to shew cause why they should not be ordered to make such payment as aforesaid]

It is ordered that the said do within 14 days from the date of this order pay to the registrar of this Court the sum of £ to which the said C.D. is [*or* are] entitled from them in respect of the amount due to the said A.B. under the said award [*or* memorandum *or* certificate.]

[*Or*, It is ordered that the said do within 14 days from the date of this order pay to the registrar of this Court for the use of the said A.B. the sum of £ , being the amount to which the said C.D. is [*or* are] entitled from them in respect of the weekly sum payable to the said A.B. under the said award [*or* memorandum *or* certificate] from the day of to the day of .

And that the said do thereafter until further order pay to the said A.B. the weekly sum of , being the amount to which the said C.D. is [*or* are] entitled from the said in respect of the weekly sum payable to the said A.B. under the said award [*or* memorandum *or* certificate].

Add Directions as to Investment and Application of Money ordered to be paid into Court, and as to Costs.

FORM 29.

Execution against Insurers.

In the County Court of , holden at .

[*Title as in Order against Insurers.*]

Whereas on the day of , it was ordered [*recite operative parts of order against insurers.*]

And whereas default has been made in payment of the sum of £ , payable into Court under the said order [*or* payable to the said A.B. under the said order]:

These are therefore, &c.—(*as in ordinary executions.*)

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Form 30.

FORM 30.

Register.

The Workmen's Compensation Act, 1897.

Register.

No. of Matter.	Title.	Date of Proceedings.	Nature.
1.	In the matter of arbitration between A.B. of &c., Applicant, and C.D. & Co., Limited, of, &c., Respondents.	Oct. 11, 1898	Request for arbitration filed, and copy sent to judge.
		Oct. 20, 1898	Appointment of Mr. as arbitrator.
		Oct. 24, 1898	Copy request sent to arbitrator.
		Oct. 28, 1898	Day for arbitration fixed.
		Oct. 28, 1898	Notice of day fixed sent to applicant, and notice with copy request sent to respondents by registered post.
		Nov. 4, 1898	Respondents' answer filed; copies sent to arbitrator and applicant.
		Nov. 6, 1898	Application by applicant for discovery; order made.
		Nov. 12, 1898	Respondents' affidavit filed.
		Nov. 13, 1898	Five subpœnas issued on application of applicant's solicitor.
		Nov. 16, 1898	Arbitration held; Mr. appointed as medical referee to report; further hearing adjourned.
		Nov. 23, 1898	Report of medical referee received and forwarded to arbitrator; notice given to the parties.
		Dec. 13, 1898	Further hearing. Award made as follows [enter minute of award].
		Dec. 20, 1898	Costs of applicant taxed at £ .
		Jan. 3, 1899	£ for costs paid into Court by respondents.
		Jan. 10, 1899	£ for costs paid to applicant's solicitor.
2.	In the matter of an agreement between A.B., of , and E.F. & Co., Limited, of, &c.	Jan. 7, 1899	Memorandum of agreement as to compensation, signed by solicitor of A.B., left to be recorded.
		Jan. 8, 1899	Inquiry as to genuineness sent by post to E.F. & Co., Limited.
		Jan. 10, 1899	Letter received from E.F. & Co., Limited, disputing genuineness.
		Jan. 10, 1899	Notice sent to A.B.'s solicitor, that genuineness is disputed, and that Memorandum will not be recorded without consent in writing of E.F. & Co., Limited, or order of Judge.
		Jan. 15, 1899	Application on behalf of A.B., that Memorandum be recorded.
		Jan. 31, 1899	Application heard, and order made that Memorandum be recorded with alterations.
		Feb. 2, 1899	Memorandum recorded as follows [set out Memorandum].
		Feb. 13, 1899	Costs of A.B. taxed and allowed at £ .
		Mar. 1, 1899	Execution issued for costs.
			&c., &c., &c.

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We, Alfred Martineau, Henry J. Stonor, Richard Harington, William L. Selfe, and William Cecil Smyly, being the five judges of the County Courts appointed for the making of Rules under section one hundred and sixty-four of the County Courts Act, 1888, having made the foregoing Rules of Court, pursuant to paragraph ten of the Second Schedule to the Workmen's Compensation Act, 1897, do hereby certify the same under our hands, and submit them to the Lord Chancellor accordingly.

Alfred Martineau.
Henry J. Stonor.
Richard Harington.
Wm. L. Selfe.
William Cecil Smyly.

I allow these Rules,

Halsbury, C.

The 27th of May, 1898.

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APPENDIX B.

WORKMEN'S COMPENSATION ACT, 1897.

MEDICAL REFEREES.

REGULATIONS, DATED MAY 2, 1898, MADE BY THE SECRETARY OF STATE AND THE TREASURY AS TO THE APPOINTMENT AND PAYMENT OF MEDICAL REFEREES IN ENGLAND AND WALES.*

I, the Right Honourable Sir Matthew White Ridley, Baronet, one of Her Majesty's Principal Secretaries of State, and We, the Lords Commissioners of Her Majesty's Treasury, in pursuance of the power conferred on us by the Workmen's Compensation Act, 1897, Schedule II., paragraph (13), hereby make the following regulations:—

Definitions.

1. In these regulations—

Sched. II. (13). (i.) "Medical Referee" means a legally qualified medical practitioner appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1897.

Sched. II. (13). (ii.) "Reference" means the appointment of a medical referee by a committee, arbitrator, or judge to report on any matter material to any question arising in an arbitration under the Workmen's Compensation Act, 1897.

Sched. II. (1). (iii.) "Committee" means a committee representative of an employer and his workmen, with power to settle matters under the Workmen's Compensation Act, 1897, in the case of the employer and workmen.

---

* It should be noted that these rules are framed under paragraph 13 of the Second Schedule, and deal solely with the duties and rights of referees in reference to reports "on any matter which seems material to any question arising in an arbitration." They are in no way concerned with the case where a workman submits himself for examination under paragraph 11 of the First Schedule (see note on p. 91). The only Rule which seems in any way to deal with such examination is Rule 33 (4) of the W. C. Rules, 1898, *ante*, p. 130.

Corresponding Rules have been issued for Scotland with the variations necessitated by paragraphs 14 and 15 of the Second Schedule.

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(iv.) "Agreed Arbitrator" means a single arbitrator agreed on by the parties to settle any matter which under the Workmen's Compensation Act, 1897, is to be settled by arbitration. Sched. II. (2).

(v.) "Appointed Arbitrator" means a single arbitrator appointed by the judge. Sched. II. (2).

(vi.) "Judge" means County Court Judge.

(vii.) The words "district in which the case arises" mean the county court district in which all the parties concerned reside, or, if they reside in different districts, the district in which the accident occurred, subject to any transfer made under rules of court. Sched. II. (9).

Conditions of Reference.

2. Before making any reference, the committee, arbitrator, or judge shall be satisfied, after hearing all medical evidence tendered by either side, that such evidence is either conflicting or insufficient on some matter which seems material to a question arising in the arbitration, and that it is desirable to obtain a report from a medical referee on such matter.

Form and Mode of Reference.

3. Every reference shall be made in writing and shall state the matter on which the report of the medical referee is required, and the question arising in the arbitration to which such matter seems to be material. Such reference shall be in accordance with the form prescribed in the schedule to these regulations, or as near thereto as may be. Form A.

The reference shall be accompanied by a general statement of the medical evidence given on behalf of the parties; and if such evidence has been given before a committee or an agreed arbitrator, each medical witness shall sign the statement of his evidence, and may add any necessary explanation or correction.

4. On making the reference to the medical referee, the committee, arbitrator, or judge shall make an order in the form prescribed in the schedule, directing the injured workman to submit himself for examination by the medical referee. Before making such order they shall inquire whether he is in a fit condition to travel for the purpose of examination, and if satisfied that he is in a fit condition, they shall by the same order direct him to attend at such time and place as the referee may fix. Form B.

It shall be the duty of the injured workman to obey any such order.

If the committee, arbitrator, or judge is satisfied that the workman is not in a fit condition to travel, they shall so state in the reference.

5. The reference shall be signed, if made by a committee, by the chairman and secretary of the committee; if made by an agreed arbitrator, by the arbitrator; if made by a judge or an appointed arbitrator, by the

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judge or arbitrator, by the registrar of or the county court in which the arbitration is pending.

6. Where there has been a previous reference in any case, any subsequent reference in the same case shall, if possible, be accompanied by the previous report of the medical referee.

7. Where the reference is made by a committee or agreed arbitrator, it shall be forwarded to the registrar of the county court of the district in which the case arises.

Selection of Medical Referee.

8. (1) In the case of a reference by a committee or agreed arbitrator the medical referee shall be one of those appointed by the Secretary of State for the county court circuit which includes the district in which the case arises, and shall, except as provided in Regulation 10,

(*a*) If the circuit has been sub-divided and medical referees have been appointed for each sub-division, be one of those appointed for the sub-division which includes the district in which the case arises;

(*b*) If a rota has been established either for the circuit or for a sub-division of the circuit, be selected in accordance with the rota.

(2) In the case of a reference by a judge or by an appointed arbitrator, the medical referee shall be one of those appointed by the Secretary of State for the circuit.

9. It shall be competent for a committee or an agreed arbitrator, without naming a medical referee, to address the reference in general terms to "one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1897."

10. Where there has been a previous reference in any case, any subsequent reference in the same case shall, if possible, be made to the same referee.

Duties of Registrar.

11. (1) In the case of a reference by a committee or agreed arbitrator, the registrar on receiving the reference—

(*a*) Shall see that the reference is in accordance with these regulations, and if it is not, shall return it for amendment;

(*b*) Shall, if no medical referee is named in the reference, insert the name of the medical referee proper to be appointed;

(*c*) Shall, when the reference is in accordance with these regulations, countersign and seal it, and forward it forthwith to the medical referee.

(2) In the case of a reference by a judge or an appointed arbitrator, the registrar of the court in which the arbitration is pending shall sign (or countersign) and seal it, and forward it forthwith to the medical referee.

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12. The registrar shall keep a record in the form prescribed in the schedule to these regulations of all references forwarded by him, and shall send the same to the Secretary of State at the end of each quarter. Form D.

13. The registrar, on receiving a report from a medical referee under Regulation 17, shall forthwith file a copy at the court and transmit the report to the committee, arbitrator, or judge by whom the reference was made.

If the committee, arbitrator, or judge shall direct that the parties be at liberty to inspect the report, the registrar shall, on receiving notice of such direction, permit such inspection to be made during office hours, and shall, on the application and at the cost of any party, furnish him with a copy of the report or allow him to take a copy thereof.

14. When a medical referee attends under Regulation 19, the registrar shall certify in the record of references which he is required to keep under Regulation 12 that the attendance was at the special request of the judge or appointed arbitrator.

Report of Medical Referee.

15. The medical referee shall not accept any reference unless signed by the judge, appointed arbitrator, or registrar, and sealed with the seal of the county court.

16. The medical referee shall, on receipt of a reference duly signed, appoint a time, and, in cases where the injured workman is able to travel, a place for the examination of the workman, and shall send him notice accordingly. Form C.

17. The medical referee shall give his report in writing, and shall forward it to the registrar from whom he received the reference.

18. The committee, arbitrator, or judge may, by request signed and forwarded in the same manner as the reference, remit the report to the medical referee for further statement on any matter to be specified in such request.

Personal Attendance of Medical Referee.

19. In any case of special difficulty the judge, or appointed arbitrator, may require the attendance of the medical referee at any proceedings in the arbitration subsequent to the receipt of the report, at a date and hour to be arranged, and the medical referee shall attend accordingly, but this regulation shall not authorize the medical referee being called as a witness.

Fees.

20. The following shall be the scale of fees to be paid to the medical referees:—

(i.) For a first reference, to include examination of the injured workman and written report 2 guineas.

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(ii.) For a further statement under Regulation 18 on any matter not covered by the original reference ... ... 1 guinea.

(iii.) For a second or subsequent reference to the same referee in a further arbitration on the case, to include examination, if necessary, and written report ... ... 1 guinea.

(iv.) Where a medical referee attends at the request of the county court judge or appointed arbitrator, for such attendance ... 3 guineas.

(v.) Where, in order to examine the injured workman or to attend on the county court judge or arbitrator, the medical referee is compelled to travel to a place distant more than two miles from his residence, or such other centre as may be prescribed by the Secretary of State, in addition to the above fees—5*s.* for each mile distant from such residence or centre.

Form E.

21. The medical referee shall send to the Home Office at the end of each quarter a statement, in the form prescribed in the schedule to these regulations, of the fees due to him for the quarter under these regulations.

22. In cases where a claim is made under Regulation 20 (v.) in respect of an examination of an injured workman, the medical referee, in submitting his quarterly statement under Regulation 21, shall certify the distance of the place where the examination was made from his residence or other prescribed centre.

23. These Regulations shall come into force on the 1st day of July, 1898, and shall apply to England and Wales.

M. W. Ridley,
One of Her Majesty's Principal Secretaries of State.
H. T. Anstruther,
W. H. Fisher,
Two of the Lords Commissioners of Her Majesty's Treasury.

2*nd May*, 1898.

SCHEDULE.

(Form A.)

Reference to a Medical Referee.

In the matter of the Workmen's Compensation Act, 1897,
and
In the matter of an Arbitration between—

A.B.
Address
Description Applicant,

and

C.D.
Address
Description Respondent.

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As the case may be
- (*a*) We, a committee representative of and his workmen, and empowered to arbitrate in the matter arising under the Workmen's Compensation Act between *A.B.* and *C.D.*;
- (*b*) I, , an arbitrator agreed upon by *A.B.* and *C.D.* to arbitrate in the matter arising between them under the Workmen's Compensation Act, 1897;
- (*c*) I, , Judge of County Courts;
- (*d*) I, , arbitrator appointed by a Judge of County Courts,

having heard the evidence tendered by both parties, hereby certify that in our (*or* my) opinion the medical evidence given before us (*or* me) is conflicting (*or* insufficient) on a matter which seems to us (*or* me) to be material to a question arising in the above-mentioned arbitration, and that it is desirable to obtain a report from a medical referee on such matter, as follows:—

(A) On the day of personal injury was (*or* is alleged to have been) caused to * by accident arising out of and in the course of his employment, under the following circumstances:—

†

(B) The matter on which we are (*or* I am) satisfied that it is desirable to obtain a report is—

(C) Such matter seems to be material to the following questions arising in the arbitration, viz.:—

We (*or* I) therefore appoint ‡ one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1897, to examine the said § and to report to us (*or* me) on the matter specified above.

A statement of the medical evidence given before us (*or* me) is appended.

We are (*or* I am) satisfied that the said § who is now at , is in a fit condition to travel for the purpose of being examined, and he has been directed to attend on the referee for examination at such time and place as shall be fixed by the referee; *or* does not appear to be in a fit condition to travel for the purpose of being examined.

The referee is requested to forward his report to, The Registrar, County Court Office, on or before the day of

Dated this day of

(Signed)

* *

or On behalf of the Committee *Chairman* / *Secretary* } *of Committee.*

Signature of Registrar and Seal of Court.

A previous reference was made to a medical referee in this case on the , 189 , and a copy of the report then given is attached.

*Insert name of injured workman.

† Here state the facts of the accident as ascertained from the evidence.

‡ The name may, under Regulation 9, be left in blank to be inserted by the Registrar.

§Insert name of injured workman.

** For signature of judge or arbitrator.

(FORM B.)

Order on Injured Workman to submit himself for Examination by Medical Referee.

(*Title as in reference.*)

To *A.B.* *Address.*

of *Description.*

TAKE NOTICE—

That the Committee (*or* arbitrator, *or* judge) have (*or* has) appointed one of the medical referees under the Workmen's Compensation Act, 1897, to examine you for the purposes of the above-mentioned arbitration, and to report to them (*or* him).

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* Strike out from "and to attend" when injured workman does not appear to be in a fit condition to travel.

You are hereby required to submit yourself for examination by such referee,* and to attend for that purpose at such time and place as may be fixed by him.

Dated this day of .

(*To be signed in the same manner as reference.*)

(FORM C.)

Notice by Medical Referee to Injured Workman.

Workmen's Compensation Act, 1897.

To *A.B.*

I hereby give you notice that I have been appointed to examine and report on your case under the above-named Act, and that I propose to make such examination at on the day of at o'clock.

Signed *Medical Referee.*

(FORM D.)

Record of References to be kept by Registrar.

County Court Circuit . District . Name of Registrar .

For quarter ended .

Number of Reference.	Names of Parties.	Workman's Employment.	Date on which Reference received or made.	By whom made.†	Whether workman directed to attend on Medical Referee, or not.	Medical Referee appointed.	Date and number of previous Reference in same case, if any.

† Here say whether committee, agreed arbitrator, county court judge, or appointed arbitrator.

Endorsement to be made on back of form.

I hereby certify that the medical referee attended at , on , with respect to reference No. , at the special request of

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(FORM E.)

Medical Referee's Statement of Fees.

Number.	Names of Parties.	Date on which Reference received.	Registrar from whom received.	Date and place of Examination.	Date on which Report sent.	Date of attendance, if any, on Judge or Arbitrator.	Amount of Fees under each of the headings in Regulation 20.				
							(i.)	(ii.)	(iii.)	(iv.)	(v.)
							£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
1.	A B. and C. D.	10 July, 1898.									
2.	E. F. and G. H.	6 Sept., 1898.									
							Total .. £ s. d.				

* I hereby certify that I examined the applicant on , at which is distant miles from my residence or prescribed centre. .

Signed

* Endorsement to be made on back of statement.

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APPENDIX C.

THE DEFINITION OF "FACTORY" IN THE ACT, AND THE MATERIAL SECTIONS OF THE FACTORY AND WORKSHOP ACT, 1901, TO WHICH REFERENCE MAY BE NECESSARY.

By the definition of "Factory" in the Workmen's Compensation Act (s. 7, sub-s. 2), "factory"—

(A) "has the same meaning as in the Factory and Workshop Acts, 1878–1891.
(B) "and also includes any dock, wharf, quay, warehouse, machinery, or plant, to which any provision of the Factory Acts is applied by the Factory and Workshop Act, 1895, and every laundry worked by steam, water, or other mechanical power."

As to the first part of this definition—

(A) **Factory has the same meaning as in the Factory and Workshop Acts, 1878–1891.**

These words must now be read in the light of s. 38, sub-s. 1, of the Interpretation Act, 1889, which is as follows:—

"Where this Act or any Act passed after the commencement of this Act repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted."

The Factory and Workshop Acts, 1878–1891, have now been repealed and re-enacted (with modifications) by the Factory and Workshop Act, 1901. To ascertain the meaning of "factory" according to the above definition, we must therefore now look to *such provisions of the Act of* 1901 *as correspond to the provisions of the Acts of* 1878–1891. The following are the material provisions of the Act of 1901, within these words:—

Factories and workshops to which Act applies.

149.—(1.) Subject to the provisions of this section, the following expressions have in this Act the meanings hereby assigned to them; that is to say:—
The expression "textile factory" means any premises wherein or within the close or curtilage of which steam, water, or other mechanical power, is used to move or work any machinery employed in preparing, manufacturing, or

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finishing, or in any process incident to the manufacture of cotton, wool, hair, silk, flax, hemp, jute, tow, china-grass, cocoa-nut fibre, or other like material, either separately or mixed together, or mixed with any other material, or any fabric made thereof:

Provided that print works, bleaching and dyeing works, lace warehouses, paper mills, flax scutch mills, rope works, and hat works, shall not be deemed to be textile factories:

The expression "non-textile factory" means—

(*a.*) any works, warehouses, furnaces, mills, foundries, or places named in Part One of the Sixth Schedule to this Act; and

(*b.*) any premises or places named in Part Two of the said schedule wherein or within the close or curtilage or precincts of which steam, water, or other mechanical power, is used in aid of the manufacturing process carried on there; and

(*c.*) any premises wherein or within the close or curtilage or precincts of which any manual labour is exercised by way of trade or for purposes of gain in or incidental to any of the following purposes, namely—

(i.) the making of any article or of part of any article; or

(ii.) the altering, repairing, ornamenting, or finishing of any article; or

(iii.) the adapting for sale of any article,

and wherein or within the close or curtilage or precincts of which steam, water, or other mechanical power is used in aid of the manufacturing process carried on there:

The expression "factory" means textile factory and non-textile factory, or either of those descriptions of factories:

The expression "tenement factory" means a factory where mechanical power is supplied to different parts of the same building occupied by different persons for the purpose of any manufacturing process or handicraft, in such manner that those parts constitute in law separate factories, and for the purpose of the provisions of this Act with respect to tenement factories all buildings situate within the same close or curtilage shall be treated as one building:

The expression "workshop" means—

(*a.*) any premises or places named in Part Two of the Sixth Schedule to this Act, which are not a factory; and

(*b.*) any premises, room, or place, not being a factory, in which premises, room, or place, or within the close or curtilage or precincts of which premises, any manual labour is exercised by way of trade or for purposes of gain in or incidental to any of the following purposes, namely—

(i.) the making of any article or of part of any article; or

(ii.) the altering, repairing, ornamenting, or finishing of any article; or

(iii.) the adapting for sale of any article,

and to or over which premises, room, or place the employer of the persons working therein has the right of access or control:

The expression "workshop" includes a tenement workshop;

The expression "tenement workshop" means any workplace in which, with the permission of or under agreement with the owner or occupier, two or more persons carry on any work which would constitute the workplace a workshop if the persons working therein were in the employment of the owner or occupier.

(2.) A part of a factory or workshop may, with the approval in writing of the chief inspector, be taken for the purposes of this Act to be a separate factory or workshop.

(3.) A room solely used for the purpose of sleeping therein shall not be deemed to form part of the factory or workshop for the purposes of this Act.

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(4.) Where a place situate within the close, curtilage, or precincts forming a factory or workshop is solely used for some purpose other than the manufacturing process or handicraft carried on in the factory or workshop, that place shall not be deemed to form part of the factory or workshop for the purposes of this Act, but shall, if otherwise it would be a factory or workshop, be deemed to be a separate factory or workshop, and be regulated accordingly.

(5.) A place or premises shall not be excluded from the definition of a factory or workshop by reason only that the place or premises is or are in the open air.

(6.) The exercise by any young person or child in any recognized efficient school, during a portion of the school hours, of any manual labour for the purpose of instructing the young person or child in any art or handicraft shall not be deemed to be an exercise of manual labour for the purpose of gain within the meaning of this Act.

Application to Crown factories and workshops.

150.—(1.) This Act applies to factories and workshops belonging to the Crown; but in case of any public emergency the Secretary of State may, by order, to the extent and during the period named by him, exempt from this Act any factory or workshop belonging to the Crown, or any factory or workshop in respect of work which is being done on behalf of the Crown under a contract specified in the order.

(2.) A factory or workshop belonging to or in the occupation of the Crown shall not be excluded from the operation of this Act by reason only that it is not carried on by way of trade or for the purpose of gain.

(3.) The powers conferred by this Act on a district council or other local authority shall, in the case of a factory or workshop belonging to or in the occupation of the Crown, be exercised by an inspector under this Act.

Definition of employment and working for hire.

152.—(1.) A woman, young person, or child, who works in a factory or workshop, whether for wages or not, either in a manufacturing process or handicraft, or in cleaning any part of the factory or workshop used for any manufacturing process or handicraft, or in cleaning or oiling any part of the machinery, or in any other kind of work whatsoever incidental to or connected with the manufacturing process or handicraft, or connected with the article made or otherwise the subject of the manufacturing process or handicraft therein, shall, save as is otherwise provided by this Act, be deemed to be employed therein within the meaning of this Act.

(2.) For the purposes of this Act an apprentice shall be deemed to work for hire.

General definitions. "Machinery." "Process."

156.—(1.) In this Act unless the context otherwise requires,—

The expression "machinery" includes any driving strap or band:

The expression "process" includes the use of any locomotive.

SIXTH SCHEDULE.

Sections 54, 149, 156.

List of Factories and Workshops.

Part One.

Non-Textile Factories.

"Print works."

(1.) "Print works," that is to say, any premises in which any persons are employed to print figures, patterns, or designs upon any cotton, linen, woollen, worsted, or silken yarn, or upon any woven or felted fabric not being paper;

"Bleaching and dyeing works."

(2.) "Bleaching and dyeing works," that is to say, any premises in which the processes of bleaching, beetling, dyeing, calendering, finishing, hooking, lapping, and making up and packing any yarn or cloth of any material, or the dressing or finishing of lace, or any one or more of such processes, or any process incidental thereto, are or is carried on;

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(3.) "Earthenware works," that is to say, any place in which persons work for hire in making or assisting in making, finishing, or assisting in finishing, earthenware or china of any description, except bricks and tiles not being ornamental tiles; "Earthenware works."

(4.) "Lucifer-match works," that is to say, any place in which persons work for hire in making lucifer matches, or in mixing the chemical materials for making them, or in any process incidental to making lucifer matches, except the cutting of the wood; "Lucifer-match works."

(5.) "Percussion-cap works," that is to say, any place in which persons work for hire in making percussion caps, or in mixing or storing the chemical materials for making them, or in any process incidental to making percussion caps; "Percussion-cap works."

(6.) "Cartridge works," that is to say, any place in which persons work for hire in making cartridges, or in any process incidental to making cartridges, except the manufacture of the paper or other material that is used in making the cases of the cartridges; "Cartridge works."

(7.) "Paper-staining works," that is to say, any place in which persons work for hire in printing a pattern in colours upon sheets of paper, either by blocks applied by hand, or by rollers worked by steam, water, or other mechanical power; "Paper-staining works."

(8.) "Fustian-cutting works," that is to say, any place in which persons work for hire in fustian cutting; "Fustian-cutting works."

(9.) "Blast furnaces," that is to say, any blast furnace or other furnace or premises in or on which the process of smelting or otherwise obtaining any metal from the ores is carried on; "Blast furnaces."

(10.) "Copper mills"; "Copper mills."

(11.) "Iron mills," that is to say, any mill, forge, or other premises, in or on which any process is carried on for converting iron into malleable iron, steel, or tin plate, or for otherwise making or converting steel; "Iron mills."

(12.) "Foundries," that is to say, iron foundries, copper foundries, brass foundries, and other premises or places in which the process of founding or casting any metal is carried on; except any premises or places in which such process is carried on by not more than five persons and as subsidiary to the repair or completion of some other work; "Foundries."

(13.) "Metal and india-rubber works," that is to say, any premises in which steam, water, or other mechanical power is used for moving machinery employed in the manufacture of machinery, or in the manufacture of any article of metal not being machinery, or in the manufacture of india-rubber or gutta-percha, or of articles made wholly or partially of india-rubber or gutta-percha; "Metal and india-rubber works."

(14.) "Paper mills," that is to say, any premises in which the manufacture of paper is carried on; "Paper mills."

(15.) "Glass works," that is to say, any premises in which the manufacture of glass is carried on; "Glass works."

(16.) "Tobacco factories," that is to say, any premises in which the manufacture of tobacco is carried on; "Tobacco factories."

(17.) "Letter-press printing works," that is to say, any premises in which the process of letter-press printing is carried on; "Letter-press printing works."

(18.) "Bookbinding works," that is to say, any premises in which the process of bookbinding is carried on; "Book-binding works."

(19.) "Flax scutch mills"; "Flax scutch mills."

(20.) "Electrical stations," that is to say, any premises or that part of any premises in which electrical energy is generated or transformed for the purpose of supply by way of trade, or for the lighting of any street, public place, or public building, or of any hotel, or of any railway, mine, or other industrial undertaking. "Electrical stations."

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PART TWO.

Non-Textile Factories and Workshops.

"Hat works."

(21.) "Hat works," that is to say, any premises in which the manufacture of hats or any process incidental to their manufacture is carried on;

"Rope works."

(22.) "Rope works," that is to say, any premises being a ropery, ropewalk, or rope work, in which is carried on the laying or twisting or other process of preparing or finishing the lines, twines, cords, or ropes, and in which machinery moved by steam, water, or other mechanical power is not used for drawing or spinning the fibres of flax, hemp, jute, or tow, and which has no internal communication with any buildings or premises joining or forming part of a textile factory, except such communication as is necessary for the transmission of power;

"Bakehouses."

(23.) "Bakehouses," that is to say, any places in which are baked bread, biscuits, or confectionery, from the baking or selling of which a profit is derived;

"Lace warehouses."

(24.) "Lace warehouses," that is to say, any premises, room, or place not included in bleaching and dyeing works as herein-before defined, in which persons are employed upon any manufacturing process or handicraft in relation to lace, subsequent to the making of lace upon a lace machine moved by steam, water, or other mechanical power;

"Shipbuilding yards."

(25.) "Shipbuilding yards," that is to say, any premises in which any ships, boats, or vessels used in navigation, are made, finished, or repaired;

"Quarries."

(26.) "Quarries," that is to say, any place, not being a mine, in which persons work in getting slate, stone, coprolites, or other minerals;

"Pit-banks."

50 & 51 Vict. c. 58. 35 & 36 Vict. c. 77.

(27.) "Pit-banks," that is to say, any place above ground adjacent to a shaft of a mine, in which place the employment of women is not regulated by the Coal Mines Regulation Act, 1887, or the Metalliferous Mines Regulation Act, 1872, whether such place does or does not form part of the mine within the meaning of those Acts.

(28.) Dry cleaning, carpet beating, and bottle washing works.

Note also s. 90, which begins as follows:—

"In every room, shed, or workshop, or part thereof, in which the weaving of cotton cloth is carried on (*in this Act referred to as a 'cotton cloth factory'*), the following provisions shall have effect," etc.

(B) and also includes any dock, wharf, quay, warehouse, machinery, or plant to which any provision of the Factory Acts is applied by the Factory and Workshop Act, 1895.

These words must now be construed in the light of s. 38 of the Interpretation Act, 1889, above referred to. They must accordingly be construed as though they read as follows:—

"and also includes any dock, wharf, quay, warehouse, machinery, or plant to which any provision of the Factory and Workshop Act, 1901, is applied *by any section of that Act which corresponds to any section of the Factory and Workshop Act*, 1895."

The only section of the Act of 1895 which applied provisions of the Factory Acts to docks, wharves, etc., was s. 23. That section has now been replaced in the Act of 1901 in a modified and enlarged form by ss. 104, 105, 106. These sections are as follows:—

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(v.) *Docks.*

104.—(1.) The provisions of this Act with respect to— Application of certain provisions of docks.

(i.) Power to make orders as to dangerous machines (section seventeen);
(ii.) Accidents;
(iii.) Regulations for dangerous trades;
(iv.) Powers of inspectors (section one hundred and nineteen); and
(v.) Fines in case of death or injury (section one hundred and thirty-six),

shall have effect as if every dock, wharf, quay, and warehouse, and all machinery or plant used in the process of loading or unloading or coaling any ship in any dock, harbour, or canal were included in the word "factory," and the purpose for which the machinery or plant is used were a manufacturing process; and as if the person who by himself, his agents, or workmen, uses any such machinery or plant for the before-mentioned purpose were the occupier of the premises; and for the purpose of the enforcement of those provisions the person having the actual use or occupation of a dock, wharf, quay, or warehouse, or of any premises within the same or forming part thereof, and the person so using any such machinery or plant shall be deemed to be the occupier of a factory.

(2.) For the purpose of this section the expression "plant" includes any gangway or ladder used by any person employed to load or unload or coal a ship, and the expressions "ship" and "harbour" have the same meaning as in the Merchant Shipping Act, 1894. 57 & 58 Vict. c. 60.

(vi.) *Buildings.*

105.—(1.) The provisions of this Act with respect to— Application of certain provisions to buildings.

(i.) Power to make orders as to dangerous machines (section seventeen);
(ii.) Accidents;
(iii.) Regulations for dangerous trades;
(iv.) Powers of inspectors (section one hundred and nineteen); and
(v.) Fines in case of death or injury (section one hundred and thirty-six),

shall have effect as if any premises on which machinery worked by steam, water, or other mechanical power is temporarily used for the purpose of the construction of a building or any structural work in connection with a building were included in the word "factory," and the purpose for which the machinery is used were a manufacturing process, and as if the person who, by himself, his agents, or workmen, temporarily uses any such machinery for the before-mentioned purpose were the occupier of the said premises; and for the purpose of the enforcement of those provisions the person so using any such machinery shall be deemed to be the occupier of a factory.

(2.) The provisions of this Act with respect to notice of accidents, and the formal investigation of accidents, shall have effect as if—

(*a*) any building which exceeds thirty feet in height, and which is being constructed or repaired by means of a scaffolding; and
(*b*) any building which exceeds thirty feet in height, and in which more than twenty persons, not being domestic servants, are employed for wages,

were included in the word "factory," and, as if, in the first case, the employer of the persons engaged in the construction or repair and, in the second case, the occupier of the building, were the occupier of a factory.

(vii.) *Railways.*

106.—(1.) Where any line or siding not being part of a railway within the meaning of the Railway Employment (Prevention of Accidents) Act, 1900, is used in connexion with a factory or workshop, or with any place to which any of the provisions of this Act are applied, the provisions of this Act with respect to— Application of certain provisions to railway sidings. 63 & 64 Vict. c. 27.

(i.) Power to make orders as to dangerous machines (section seventeen);
(ii.) Accidents;
(iii.) Regulations for dangerous trades;

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(iv.) Powers of inspectors (section one hundred and nineteen); and

(v.) Fines in case of death or injury (section one hundred and thirty-six),

shall have effect as if the line or siding were part of the factory or workshop.

(2.) If any such line or siding is used in connexion with more than one factory or workshop belonging to different occupiers, the foregoing provisions shall have effect as if the line or siding were a separate factory.

The following sections are also referred to in the body of the book, and are accordingly, for purposes of convenient reference, also set out in this Appendix :—

Power to make order as to dangerous machine.

17.—(1.) A court of summary jurisdiction may, on complaint by an inspector, and on being satisfied that any part of *the ways, works, machinery, or plant* used in a factory or workshop (including a steam boiler used for generating steam) is in such a condition that it cannot be used without danger to life or limb, by order, prohibit its use, or, if it is capable of repair or alteration, prohibit its use until it is duly repaired or altered.

(2.) Where a complaint has been made under this section, the court or a justice may, on application *ex parte* by the inspector, and on receiving evidence that the use of any such part of the ways, works, machinery, or plant, involves imminent danger to life, make an interim order prohibiting, either absolutely or subject to conditions, the use thereof until the earliest opportunity for hearing and determining the complaint.

(3.) If there is any contravention of an order under this section, the person entitled to control the use of the part of the ways, works, machinery, or plant, shall be liable to a fine not exceeding forty shillings a day during the contravention.

Notice of accidents causing death or bodily injury.

19.—(1.) Where there occurs in a *factory or workshop* any accident which either—

(*a*) causes loss of life to a person employed in the factory or workshop; or

(*b*) causes to a person employed in the factory or workshop such bodily injury as to prevent him on any one of the three working days next after the occurrence of the accident from being employed for five hours on his ordinary work,

written notice shall forthwith be sent to the inspector for the district.

(2.) If the accident causes loss of life, or is produced either by machinery moved by steam, water, or other mechanical power, or through a vat, pan, or other structure, filled with hot liquid or molten metal or other substance, or by explosion or by escape of gas, steam, or metal, then, unless notice thereof is required by section sixty-three of the Explosives Act, 1875, to be sent to a Government inspector, notice thereof shall forthwith be sent to the certifying surgeon for the district.

38 & 39 Vict. c. 17.

(3.) The notice shall state the residence of the person killed or injured, and the place to which he has been removed.

(4.) If any notice required by this section to be sent with respect to an accident in a factory or workshop is not so sent, the occupier of the factory or workshop shall be liable to a fine not exceeding five pounds.

(5.) If any accident to which this section applies occurs to a person employed in an iron mill or blast furnace or other factory or workshop where the occupier is not the actual employer of the person killed or injured, the actual employer shall immediately report the same to the occupier, and in default shall be liable to a fine not exceeding five pounds.

Owner of machine liable in certain cases instead of occupier.

142. Where in a factory the owner or hirer of a machine or implement moved by steam, water, or other mechanical power, is some person other than the occupier of the factory, the owner or hirer shall, so far as respects any offence against this Act committed in relation to a person who is employed in or about or in connexion with that machine or implement, and is in the employment or pay of the owner or hirer, be deemed to be the occupier of the factory.

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157. The following provisions of this Act shall not apply to men's workshops, that is to say, workshops conducted on the system of not employing any woman, young person, or child therein:— Men's workshops.

(1.) The sections in Part I. relating to temperature, thermometers, means of ventilation, drainage of floors, sanitary conveniences, opening of doors, *power to make orders as to dangerous machinery*, and inquests;

(2.) Part II. and Part III.;

(3.) The sections in Part IV. relating to fans and to lavatories and meals;

(4.) Part VII.

(5.) The sections of Part VIII. relating to the affixing of abstracts and notices, and the keeping of a general register, and the first sub-section of the section relating to periodical returns.

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APPENDIX D.

THE WORKMEN'S COMPENSATION ACT, 1897

(60 AND 61 VICT. C. 37).

An Act to amend the Law with respect to Compensation to Workmen for accidental Injuries suffered in the course of their Employment.

[*6th August*, 1897.]

Liability of certain employers to workmen for injuries.

1.—(1.) If in any employment to which this Act applies personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the First Schedule to this Act.

(2.) Provided that:—

(*a*) The employer shall not be liable under this Act in respect of any injury which does not disable the workman for a period of at least two weeks from earning full wages at the work at which he was employed;

(*b*) When the injury was caused by the personal negligence or wilful act of the employer, or of some person for whose act or default the employer is responsible, nothing in this Act shall affect any civil liability of the employer, but in that case the workman may, at his option, either claim compensation under this Act, or take the same proceedings as were open to him before the commencement of this Act; but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of the employment both independently of and also under this Act, and shall not be liable to any proceedings independently of this Act, except in case of such personal negligence or wilful act as aforesaid;

(*c*) If it is proved that the injury to a workman is attributable to the serious and wilful misconduct of that workman, any compensation claimed in respect of that injury shall be disallowed.

(3.) If any question arises in any proceedings under this Act as to the liability to pay compensation under this Act (including any question as to whether the employment is one to which this Act applies), or as to the amount or duration of compensation under this Act, the question, if not settled by agreement, shall, subject to the provisions of the First Schedule to this Act, be settled by arbitration, in accordance with the Second Schedule to this Act.

(4.) If, within the time hereinafter in this Act limited for taking proceedings, an action is brought to recover damages independently of this Act for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been

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liable to pay compensation under the provisions of this Act, the action shall be dismissed; but the court in which the action is tried shall, if the plaintiff shall so choose, proceed to assess such compensation, and shall be at liberty to deduct from such compensation all the costs which, in its judgment, have been caused by the plaintiff bringing the action instead of proceeding under this Act.

In any proceeding under this sub-section, when the Court assesses the compensation it shall give a certificate of the compensation it has awarded and the directions it has given as to the deduction for costs, and such certificate shall have the force and effect of an award under this Act.

(5.) Nothing in this Act shall affect any proceeding for a fine under the enactments relating to mines or factories, or the application of any such fine, but if any such fine, or any part thereof, has been applied for the benefit of the person injured, the amount so applied shall be taken into account in estimating the compensation under this Act.

Time for taking proceedings.

2.—(1.) Proceedings for the recovery under this Act of compensation for an injury shall not be maintainable unless notice of the accident has been given as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury, or, in case of death, within six months from the time of death. Provided always that the want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings, if it is found in the proceedings for settling the claim that the employer is not prejudiced in his defence by the want, defect, or inaccuracy, or that such want, defect, or inaccuracy was occasioned by mistake or other reasonable cause.

(2.) Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which it was sustained, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

(3.) The notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served.

(4.) The notice may also be served by post by a registered letter addressed to the person on whom it is to be served at his last known place of residence or place of business, and if served by post shall be deemed to have been served at the time when the letter containing the same would have been delivered in the ordinary course of post, and in proving the service of such notice it shall be sufficient to prove that the notice was properly addressed and registered.

(5.) Where the employer is a body of persons corporate or unincorporate, the notice may also be served by delivering the same at, or by sending it by post in a registered letter addressed to the employer at the office, or, if there be more than one office, any one of the offices of such body.

Contracting-out.

3.—(1.) If the Registrar of Friendly Societies, after taking steps to ascertain the views of the employer and workmen, certifies that any scheme of compensation, benefit, or insurance for the workmen of an employer in any employment, whether or not such scheme includes other employers and their workmen, is on the whole not less favourable to the general body of workmen and their dependants than the provisions of this Act, the employer may, until the certificate is revoked, contract with any of those workmen that the provisions of the scheme shall be substituted for the provisions of this Act, and thereupon the employer shall be liable only in accordance with the scheme, but, save as aforesaid, this Act shall apply notwithstanding any contract to the contrary made after the commencement of this Act.

(2.) The registrar may give a certificate to expire at the end of a limited period not less than five years.

(3.) No scheme shall be so certified which contains an obligation upon the workmen to join the scheme as a condition of their hiring.

(4.) If complaint is made to the Registrar of Friendly Societies by or on behalf of the workmen of any employer that the provisions of any scheme are no longer

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on the whole so favourable to the general body of workmen of such employer and their dependants as the provisions of this Act, or that the provisions of such scheme are being violated, or that the scheme is not being fairly administered, or that satisfactory reasons exist for revoking the certificate, the registrar shall examine into the complaint, and, if satisfied that good cause exists for such complaint, shall, unless the cause of complaint is removed, revoke the certificate.

(5.) When a certificate is revoked or expires, any moneys or securities held for the purpose of the scheme shall be distributed as may be arranged between the employer and workmen, or as may be determined by the Registrar of Friendly Societies in the event of a difference of opinion.

(6.) Whenever a scheme has been certified as aforesaid, it shall be the duty of the employer to answer all such inquiries and to furnish all such accounts in regard to the scheme as may be made or required by the Registrar of Friendly Societies.

(7.) The Chief Registrar of Friendly Societies shall include in his annual report the particulars of the proceedings of the Registrar under this Act.

Sub-contracting.

4.—Where, in an employment to which this Act applies, the undertakers as hereinafter defined contract with any person for the execution by or under such contractor of any work, and the undertakers would, if such work were executed by workmen immediately employed by them, be liable to pay compensation under this Act to those workmen in respect of any accident arising out of and in the course of their employment, the undertakers shall be liable to pay any workman employed in the execution of the work any compensation which is payable to the workman (whether under this Act or in respect of personal negligence or wilful act independently of this Act) by such contractor, or would be so payable if such contractor were an employer to whom this Act applies.

Provided that the undertakers shall be entitled to be indemnified by any other person who would have been liable independently of this section.

This section shall not apply to any contract with any person for the execution by or under such contractor of any work which is merely ancillary or incidental to, and is no part of, or process in, the trade or business carried on by such undertakers respectively.

Compensation to workmen in case of bankruptcy of employer.

5.—(1.) Where any employer becomes liable under this Act to pay compensation in respect of any accident, and is entitled to any sum from insurers in respect of the amount due to a workman under such liability, then in the event of the employer becoming bankrupt, or making a composition or arrangement with his creditors, or if the employer is a company of the company having commenced to be wound up, such workman shall have a first charge upon the sum aforesaid for the amount so due, and the judge of the county court may direct the insurers to pay such sum into the Post Office Savings Bank in the name of the registrar of such court, and order the same to be invested or applied in accordance with the provisions of the First Schedule hereto with reference to the investment in the Post Office Savings Bank of any sum allotted as compensation, and those provisions shall apply accordingly.

(2.) In the application of this section to Scotland, the words "have a first charge upon" shall mean "be preferentially entitled to."

Recovery of damages from stranger.

6.—Where the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof, the workman may, at his option, proceed, either at law against that person to recover damages, or against his employer for compensation under this Act, but not against both, and if compensation be paid under this Act, the employer shall be entitled to be indemnified by the said other person.

Application of Act and definitions.

7.—(1.) This act shall apply only to employment by the undertakers as hereinafter defined, on or in or about a railway, factory, mine, quarry, or engineering work, and to employment by the undertakers as hereinafter defined, on, in, or about any building which exceeds thirty feet in height, and is either being constructed or repaired by means of a scaffolding, or being demolished, or on which

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machinery driven by steam, water, or other mechanical power, is being used for the purpose of the construction, repair, or demolition thereof.

(2.) In this Act—

"Railway" means the railway of any railway company to which the Regulation of Railways Act, 1873, applies, and includes a light railway made under the Light Railways Act, 1896; and "railway" and "railway company" have the same meaning as in the said Acts of 1873 and 1896: — 36 & 37 Vict. c. 48. 59 & 60 Vict. c. 48.

"Factory" has the same meaning as in the Factory and Workshop Acts, 1878 to 1891, and also includes any dock, wharf, quay, warehouse, machinery, or plant, to which any provision of the Factory Acts is applied by the Factory and Workshop Act, 1895, and every laundry worked by steam, water, or other mechanical power: — 58 & 59 Vict. c. 37. 50 & 51 Vict. c. 58.

"Mine" means a mine to which the Coal Mines Regulation Act, 1887, or the Metalliferous Mines Regulation Act, 1872, applies: — 35 & 36 Vict. c. 77.

"Quarry" means a quarry under the Quarries Act, 1894: — 57 & 58 Vict. c. 42.

"Engineering work" means any work of construction or alteration or repair of a railroad, harbour, dock, canal, or sewer, and includes any other work for the construction, alteration, or repair of which machinery driven by steam, water, or other mechanical power is used:

"Undertakers" in the case of a railway means the railway company; in the case of a factory, quarry, or laundry, means the occupier thereof within the meaning of the Factory and Workshop Acts, 1878 to 1895; in the case of a mine means the owner thereof within the meaning of the Coal Mines Regulation Act, 1887, or the Metalliferous Mines Regulation Act, 1872, as the case may be, and in the case of an engineering work means the person undertaking the construction, alteration, or repair; and in the case of a building means the persons undertaking the construction, repair, or demolition:

"Employer" includes any body of persons corporate or unincorporate and the legal personal representative of a deceased employer:

"Workman" includes every person who is engaged in an employment to which this Act applies, whether by way of manual labour or otherwise, and whether his agreement is one of service or apprenticeship or otherwise, and is expressed or implied, is oral or in writing. Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative or to his dependants, or other person to whom compensation is payable.

"Dependants" means—

(*a*) in England and Ireland, such members of the workman's family specified in the Fatal Accidents Act, 1846, as were wholly or in part dependent upon the earnings of the workman at the time of his death; and — 9 & 10 Vict. c. 93.

(*b*) in Scotland, such of the persons entitled according to the law of Scotland to sue the employer for damages or solatium in respect of the death of the workman, as were wholly or in part dependent upon the earnings of the workman at the time of his death.

(3.) A workman employed in a factory which is a shipbuilding yard shall not be excluded from this Act by reason only that the accident arose outside the yard in the course of his work upon a vessel in any dock, river, or tidal water near the yard.

Application to workmen in employment of Crown.

8.—(1.) This Act shall not apply to persons in the naval or military service of the Crown, but otherwise shall apply to any employment by or under the Crown to which this Act would apply if the employer were a private person.

(2.) The Treasury may, by warrant laid before Parliament, modify for the purposes of this Act their warrant made under section one of the Superannuation Act, 1887, and notwithstanding anything in that Act, or any such warrant, may frame a scheme with a view to its being certified by the Registrar of Friendly Societies under this Act. — 50 & 51 Vict. c. 67.

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Provision as to existing contracts.

9.—Any contract existing at the commencement of this Act, whereby a workman relinquishes any right to compensation from the employer for personal injury arising out of and in the course of his employment, shall not, for the purposes of this Act, be deemed to continue after the time at which the workman's contract of service would determine if notice of the determination thereof were given at the commencement of this Act.

Commencement of Act and short title.

10.—(1.) This Act shall come into operation on the first day of July one thousand eight hundred and ninety-eight.

(2.) This Act may be cited as the Workmen's Compensation Act, 1897.

SCHEDULES.

Sections 1, 5.

FIRST SCHEDULE.

Scale and Conditions of Compensation.

Scale.

(1.) The amount of compensation under this Act shall be—

(*a*) where death results from the injury—

(i.) if the workman leaves any dependants wholly dependent upon his earnings at the time of his death, a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of one hundred and fifty pounds, whichever of those sums is the larger, but not exceeding in any case three hundred pounds, provided that the amount of any weekly payments made under this Act shall be deducted from such sum, and if the period of the workman's employment by the said employer has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be 156 times his average weekly earnings during the period of his actual employment under the said employer;

(ii.) if the workman does not leave any such dependants, but leaves any dependants in part dependent upon his earnings at the time of his death, such sum, not exceeding in any case the amount payable under the foregoing provisions, as may be agreed upon, or, in default of agreement, may be determined, on arbitration under this Act, to be reasonable and proportionate to the injury to the said dependants; and

(iii.) if he leaves no dependants, the reasonable expenses of his medical attendance and burial, not exceeding ten pounds;

(*b*) where total or partial incapacity for work results from the injury, a weekly payment during the incapacity after the second week not exceeding fifty per cent. of his average weekly earnings during the previous twelve months, if he has been so long employed, but if not, then for any less period during which he has been in the employment of the same employer, such weekly payment not to exceed one pound.

(2.) In fixing the amount of the weekly payment, regard shall be had to the difference between the amount of the average weekly earnings of the workman before the accident and the average amount which he is able to earn after the

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accident, and to any payment not being wages which he may receive from the employer in respect of his injury during the period of his incapacity.

(3.) Where a workman has given notice of an accident, he shall, if so required by the employer, submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, and if he refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation, and any proceeding under this Act in relation to compensation, shall be suspended until such examination takes place.

(4.) The payment shall, in case of death, be made to the legal personal representative of the workman, or, if he has no legal personal representative, to or for the benefit of his dependants, or, if he leaves no dependants, to the person to whom the expenses are due; and, if made to the legal personal representative, shall be paid by him to or for the benefit of the dependants or other person entitled thereto under this Act.

(5.) Any question as to who is a dependant, or as to the amount payable to each dependant, shall, in default of agreement, be settled by arbitration under this Act.

(6.) The sum allotted as compensation to a dependant may be invested or otherwise applied for the benefit of the person entitled thereto, as agreed, or as ordered by the committee or other arbitrator.

(7.) Any sum which is agreed or is ordered by the committee or arbitrator to be invested may be invested in whole or in part in the Post Office Savings Bank by the registrar of the county court in his name as registrar.

(8.) Any sum to be so invested may be invested in the purchase of an annuity from the National Debt Commissioners through the Post Office Savings Bank, or be accepted by the Postmaster-General as a deposit in the name of the registrar as such, and the provisions of any statute or regulations respecting the limits of deposits in savings bank, and the declaration to be made by a depositor, shall not apply to such sums.

(9.) No part of any money invested in the name of the registrar of any county court in the Post Office Savings Bank under this Act shall be paid out, except upon authority addressed to the Postmaster-General by the Treasury or by the judge of the county court.

(10.) Any person deriving any benefit from any moneys invested in a post office savings bank under the provisions of this Act may, nevertheless, open an account in a post office savings bank or in any other savings bank in his own name without being liable to any penalties imposed by any statute or regulations in respect of the opening of accounts in two savings banks, or of two accounts in the same savings bank.

(11.) Any workman receiving weekly payments under this Act shall, if so required by the employer, or by any person by whom the employer is entitled under this Act to be indemnified, from time to time submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, or such other person; but if the workman objects to an examination by that medical practitioner, or is dissatisfied by the certificate of such practitioner upon his condition when communicated to him, he may submit himself for examination to one of the medical practitioners appointed for the purposes of this Act, as mentioned in the Second Schedule to this Act, and the certificate of that medical practitioner as to the condition of the workman at the time of the examination shall be given to the employer and workman, and shall be conclusive evidence of that condition. If the workman refuses to submit himself to such examination, or in any way obstructs the same, his right to such weekly payments shall be suspended until such examination has taken place.

(12.) Any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review may be ended, diminished, or increased, subject to the maximum above provided, and the amount of payment shall, in default of agreement, be settled by arbitration under this Act.

(13.) Where any weekly payment has been continued for not less than six months, the liability therefor may, on the application by or on behalf of the

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employer, be redeemed by the payment of a lump sum, to be settled, in default of agreement, by arbitration under this Act, and such lump sum may be ordered by the committee or arbitrator to be invested or otherwise applied as above mentioned.

(14.) A weekly payment, or a sum paid by way of redemption thereof, shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the same.

(15.) Where a scheme certified under this Act provides for payment of compensation by a friendly society, the provisions of the proviso to the first sub-section of section eight, section sixteen, and section forty-one of the Friendly Societies Act, 1896, shall not apply to such society in respect of such scheme.

59 & 60 Vict. c. 25.

(16.) In the application of this schedule to Scotland the expression "registrar of the county court" means "sheriff clerk of the county," and "judge of the county court" means "sheriff."

(17.) In the application of this Act to Ireland the provisions of the County Offices and Courts (Ireland) Act, 1877, with respect to money deposited in the Post Office Savings Bank under that Act shall apply to money invested in the Post Office Savings Bank under this Act.

40 & 41 Vict. c. 58.

Section 1.

SECOND SCHEDULE.

ARBITRATION.

The following provisions shall apply for settling any matter which under this Act is to be settled by arbitration :—

(1.) If any committee, representative of an employer and his workmen, exists with power to settle matters under this Act in the case of the employer and workmen, the matter shall, unless either party objects, by notice in writing sent to the other party before the committee meet to consider the matter, be settled by the arbitration of such committee, or be referred by them in their discretion to arbitration as hereinafter provided.

(2.) If either party so objects, or there is no such committee, or the committee so refers the matter or fails to settle the matter within three months from the date of the claim, the matter shall be settled by a single arbitrator agreed on by the parties, or in the absence of agreement by the county court judge, according to the procedure prescribed by rules of court, or if in England the Lord Chancellor so authorizes, according to the like procedure, by a single arbitrator appointed by such county court judge.

(3.) Any arbitrator appointed by the county court judge shall, for the purposes of this Act, have all the powers of a county court judge, and shall be paid out of moneys to be provided by Parliament in accordance with regulations to be made by the Treasury.

52 & 53 Vict. c. 49.

(4.) The Arbitration Act, 1889, shall not apply to any arbitration under this Act; but an arbitrator may, if he thinks fit, submit any question of law for the decision of the county court judge, and the decision of the judge on any question of law, either on such submission, or in any case where he himself settles the matter under this Act, shall be final, unless within the time and in accordance with the conditions prescribed by rules of the Supreme Court either party appeals to the Court of Appeal; and the county court judge, or the arbitrator appointed by him, shall, for the purpose of an arbitration under this Act, have the same powers of procuring the attendance of witnesses and the production of documents as if the claim for compensation had been made by plaint in the county court.

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(5.) Rules of court may make provision for the appearance in any arbitration under this Act of any party by some other person.

(6.) The costs of and incident to the arbitration and proceedings connected therewith shall be in the discretion of the arbitrator. The costs, whether before an arbitrator or in the county court, shall not exceed the limit prescribed by rules of court, and shall be taxed in manner prescribed by those rules.

(7.) In the case of the death or refusal or inability to act of an arbitrator, a Judge of the High Court at Chambers may, on the application of any party, appoint a new arbitrator.

(8.) Where the amount of compensation under this Act shall have been ascertained, or any weekly payment varied, or any other matter decided, under this Act, either by a committee or by an arbitrator or by agreement, a memorandum thereof shall be sent, in manner prescribed by rules of court, by the said committee or arbitrator, or by any party interested, to the registrar of the county court for the district in which any person entitled to such compensation resides, who shall, subject to such rules, on being satisfied as to its genuineness, record such memorandum in a special register without fee, and thereupon the said memorandum shall for all purposes be enforceable as a county court judgment. Provided that the county court judge may at any time rectify such register.

(9.) Where any matter under this Act is to be done in a county court, or by, to, or before the judge or registrar of a county court, then, unless the contrary intention appear, the same shall, subject to rules of court, be done in, or by, to, or before the judge or registrar of, the county court of the district in which all the parties concerned reside, or, if they reside in different districts, the district in which the accident out of which the said matter arose occurred, without prejudice to any transfer in manner provided by rules of court.

(10.) The duty of a county court judge under this Act, or of an arbitrator appointed by him, shall, subject to rules of court, be part of the duties of the county court, and the officers of the court shall act accordingly, and rules of court may be made both for any purpose for which this Act authorizes rules of court to be made, and also generally for carrying into effect this Act so far as it affects the county court, or an arbitrator appointed by the judge of the county court, and proceedings in the county court or before any such arbitrator, and such rules may, in England, be made by the five judges of the county courts appointed for the making of rules under section one hundred and sixty-four of the County Courts Act, 1888, and when allowed by the Lord Chancellor, as provided by that section, shall have full effect without any further consent. 51 & 52 Vict. c. 43.

(11.) No court fee shall be payable by any party in respect of any proceeding under this Act in the county court prior to the award.

(12.) Any sum awarded as compensation shall be paid on the receipt of the person to whom it is payable under any agreement or award, and his solicitor or agent shall not be entitled to recover from him, or to claim a lien on, or deduct any amount for costs from, the said sum awarded, except such sum as may be awarded by the arbitrator or county court judge, on an application made by either party to determine the amount of costs to be paid to the said solicitor or agent, such sum to be awarded subject to taxation and to the scale of costs prescribed by rules of court.

(13.) The Secretary of State may appoint legally qualified medical practitioners for the purpose of this Act, and any committee, arbitrator, or judge may, subject to regulations made by the Secretary of State and the Treasury, appoint any such practitioner to report on any matter which seems material to any question arising in the arbitration; and the expense of any such medical practitioner shall, subject to Treasury regulations, be paid out of moneys to be provided by Parliament.

(14.) In the application of this schedule to Scotland—

(*a*) "Sheriff" shall be substituted for "county court judge," "sheriff court" for "county court," "action" for "plaint," "sheriff clerk" for

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"registrar of the county court," and "act of sederunt" for "rules of court":

(*b*) Any award or agreement as to compensation under this Act may be competently recorded for execution in the books of council and session or sheriff court books, and shall be enforceable in like manner as a recorded decree arbitral:

(*c*) Any application to the sheriff as arbitrator shall be heard, tried, and determined summarily in the manner provided by the fifty-second section of the Sheriff Courts (Scotland) Act, 1876, save only that parties may be represented by any person authorized in writing to appear for them, and subject to the declaration that it shall be competent to either party within the time and in accordance with the conditions prescribed by act of sederunt to require the sheriff to state a case on any question of law determined by him, and his decision thereon in such case may be submitted to either division of the Court of Session, who may hear and determine the same finally, and remit to the sheriff with instruction as to the judgment to be pronounced.

39 & 40 Vict. c. 70.

(15.) Paragraphs four and seven of this schedule shall not apply to Scotland.

(16.) In the application of this schedule to Ireland the expression "county court judge" shall include the recorder of any city or town.

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THE WORKMEN'S COMPENSATION ACT, 1900.

An Act to extend the Benefits of the Workmen's Compensation Act, 1897, *to Workmen in Agriculture.*

A.D. 1900.

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Application of Workmen's Compensation Act (60 & 61 Vict. c. 37) to agricultural work.

1.—(1.) From and after the commencement of this Act, the Workmen's Compensation Act, 1897, shall apply to the employment of workmen in agriculture by any employer who habitually employs one or more workmen in such employment.

(2.) Where any such employer agrees with a contractor for the execution by or under that contractor of any work in agriculture, section four of the Workmen's Compensation Act, 1897, shall apply in respect of any workman employed in such work as if that employer were an undertaker within the meaning of that Act.

Provided that where the contractor provides and uses machinery driven by mechanical power for the purpose of threshing, ploughing, or other agricultural work, he, and he alone, shall be liable under this Act to pay compensation to any workman employed by him on such work.

(3.) Where any workman is employed by the same employer mainly in agricultural but partly or occasionally in other work, this Act shall apply also to the employment of the workman in such other work.

The expression "agriculture" includes horticulture, forestry, and the use of land for any purpose of husbandry, inclusive of the keeping or breeding of live stock, poultry, or bees, and the growth of fruit and vegetables.

Short title and incorporation.

2. This Act may be cited as the Workmen's Compensation Act, 1900, and shall be read as one with the Workmen's Compensation Act, 1897, and that Act and this Act may be cited together as the Workmen's Compensation Acts, 1897 and 1900.

Commencement of Act.

3. This Act shall come into operation on the first day of July one thousand nine hundred and one.

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